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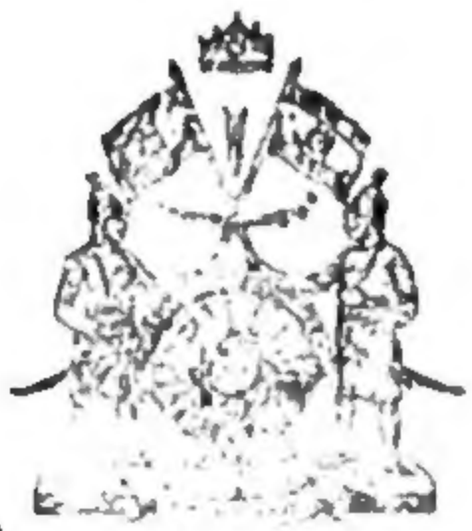

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THE CONSTITUTION OF INDIA

AMAR NANDI

The Constitution of India

THE CONSTITUTION OF INDIA

AMAR NANDI, M.A.

Assistant Editor, Hindusthan Standard

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To The Deathless Mahatma Gandhi

PREFACE

The Constitution of free India has received the highest acclamation as well as the loudest denunciation. It is being hailed by many as the greatest national achievement in several centuries, while others are openly decrying it as a new bond of slavery for the Indian people. Two features of the Constitution have evoked the sharpest criticism. These are its extreme centralisation of power and the emergency powers vested in the President, which include the power of suspending some of the most important fundamental rights in times of emergency. A vast body of critics also hold that the fundamental rights guaranteed by the Constitution are themselves so circumscribed by provisos as to become meaningless.

The features of the Constitution which have drawn unstinted praise from millions are the following:—The Constitution abolishes untouchability. It abolishes communal electorates. It abolishes and expunges from the face of India the vestiges of mediaevalism represented by the autocratic rule of Princes in five hundred odd Indian States. It introduces universal adult franchise thereby giving the right to vote to eighteen crores of people—the largest body of voters in the world. It makes compensation for State acquisition of property non-justiciable thus clearing one of the greatest difficulties in the way of nationalisation of industries and the abolition of Zamindari. It gives the courts the power of enforcing the fundamental rights and also of declaring laws that infringe those rights to be unconstitutional and void.

Whether, or how far, the Constitution will succeed in ensuring individual freedom, or in otherwords, in establishing democracy in India will ultimately depend on the character and genius of our people. Assuming that the

people of India are capable of self-government, the Constitution is certainly one that can provide a solid basis for the growth of real democracy in India. It should be remembered that no Constitution can be knave-proof. The ultimate safeguard against the growth of authoritarianism, everywhere, is the readiness of the people to overthrow it. Those, however, who have the good of our people at heart and eagerly look forward to a democratic future for India will do well to keep constantly in mind the fact that political democracy can never be stable unless it is firmly based on economic democracy.

The following pages contain a study—as far as possible, objective—of the Constitution of India. Care has been taken to make the discussion comparative, and comments have been added which, it is hoped, will be found helpful by both students and general readers.

The author wishes to express here his sincere thankfulness to Sri Basanta Kumar Das, Member, Constituent Assembly, Sri Paresh Das Gupta, M.A., P.R.S., Sri Bijoy Krishna Pramanik, Sri Janaki Nath Basu, Sri Bibhuti Bhusan Basu and Sri Ratanmani Chatterjee for the help and co-operation they gave him in bringing out this work. But for such help from them, the book would not have seen the light.

Calcutta,
The 26th January, 1950.

A. N.

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CHAPTER I

BETWEEN THE TWO WARS AND AFTER

War always quickens social and historical processes. In India the awakening of mass consciousness and the national struggle for freedom from British rule were immensely accelerated by the two World Wars. The end of World War I saw the first mass upheaval against the British rule; the end of World War II wrote its epitaph. The period spanning these two sanguinary landmarks in human history is one of tremendous significance in the story of our race. In India this period between the two Wars has been a most exciting chapter in our history. It saw the rise of those movements and the release of those forces which ultimately broke the fetters of the country's slavery and made possible the framing of a Constitution by the people of the land. A brief account of the important events during this period and the years immediately following it will be found helpful to an understanding of these forces and movements and will thus provide a fitting background to the study of the Constitution of free India.

During World War I which began in 1914 India loyally helped Britain in her war efforts. The Indian troops fought on the side of the British in various fronts in France, Flanders, Palestine, Egypt and Mesopotamia.

India also took on her shoulders a big portion of the war-debt. Indian people, however, hoped that Britain would not forget these services and would grant a substantial measure of Home Rule to the people of the country after the end of the War. There began a Home Rule movement in the country mainly under the auspices of the Indian National Congress, and the British Government felt

the necessity of making a declaration giving assurance to the people of India of their desire to introduce gradually responsible Government in the country.

In 1917, on August 20, in his famous declaration, Montagu declared that the policy of His Majesty's Government was that of increasing association of Indians in every branch of administration with a view to the progressive realisation of Responsible Government in India as an integral part of British Empire.

The Calcutta Congress in 1917 recorded its satisfaction over the pronouncement of the Secretary of State. The Congress, however, asked for a statutory provision, fixing a time-limit for the full realisation of Responsible Government and recommended that the Congress-League scheme of reforms should be introduced as a first step.

Gandhiji & Non-Co-Operation—Mahatma Gandhi arrived in India from South Africa early in 1915. He attended the Lucknow Session of the Congress in 1916. He did not figure much in Indian politics until the end of the war.

When the war ended and the armistice was signed, the Congress referring to the pronouncements of President Wilson and Lloyd George and others demanded that the principle of self-determination be applied to India. But the British Government replied with the Rowlatt Bill. The Bill made drastic provisions for imprisonment without trial and summary procedures for trial even though the war emergency was at an end. The Bill became Act in March 1919. And on March 6, 1919, at Gandhiji's call, a hartal was held throughout India. The hartal was a unique success, the masses having responded to Gandhiji's call with unbelievable enthusiasm. Thereafter came the terrible brutality at Jallianwala Bagh in Amritsar. On April 13, a large crowd gathered at the Bagh, surrounded on all sides by high walls, for a public meeting. General Dyer who entered the

Bagh with a large number of troops ordered them to open fire on the unarmed crowd without giving any warning. The people were trapped. On General Dyer's own admission 1600 rounds were fired and according to Government report 379 were killed and 1200 injured. The ghastly tragedy marked the beginning of a new chapter in the Congress struggle for freedom.

The Amritsar session of the Congress in December, 1919, denounced the Montagu-Chelmsford Reforms Scheme, announced in June 1918, as "inadequate, unsatisfactory and disappointing." At the special session at Calcutta in September 1920, Gandhiji's formula for Non-co-operation was accepted. It was earlier accepted by the Khilafat Committee which had written to the Viceroy in June, 1920, that they would start Non-co-operation, if the wrongs done to the Khalifa of Turkey were not redressed. Gandhiji had espoused the Khilafat cause whole-heartedly. So the Non-co-operation resolution said that for the redress of the Punjab and Khilafat wrongs and the establishment of Swaraj the Congress must accept the Non-co-operation formula. At the annual session at Nagpur in the month of December, the Non-co-operation programme received the final and formal approval of the Congress. Gandhiji also succeeded in changing the creed of the Congress at this session. The creed was no longer "self-government within the Empire" but "the attainment of Swaraj by the people of India by all legitimate and peaceful means." It was at this session also that 'four-anna' membership of the Congress was first introduced. Mahatmaji promised Swaraj within a year. He declared, "If they (the British people) do not want to do justice, it will be the bounden duty of every Indian to destroy the Empire."

The movement plunged the country in delirious enthusiasm. The masses were roused as never before. The

struggle for the liberation of India was for the first time broad-based on popular support and participation. Students left schools and colleges, lawyers gave up practice and thousands of peasants joined the movement. Hindus and Muslims made common cause. British goods were boycotted and huge bonfires made of them in Bombay.

A hartal was observed when the Prince of Wales landed in Bombay in November. At the annual session held in Ahmedabad resolutions were passed in which the Congress declared "the fixed determination of the Congress to continue the campaign of non-violent Non-co-operation". Gandhiji was appointed at the session "as the sole executive authority" of the Congress.

By the end of December, 1921, the number of political prisoners in jails rose to 20,000 and later it increased to 30,000.

In February, 1922, Gandhiji was contemplating to start mass Civil Disobedience and sent an ultimatum to the Viceroy. On February 4, occurred the Chouri-Choura incident in U.P. in which 22 policemen were murdered by an infuriated mob. Gandhiji was upset by the news. Civil Disobedience was suspended by the Congress Working Committee which met at Bardoli on February 12. Gandhiji was arrested on March 10, 1922 and sentenced to six year's imprisonment, but he was released on February 5, 1924, after an operation for appendicitis.

The Swaraj Party —Reforms had been inaugurated in 1921. In 1922 at the Gaya Congress an unsuccessful attempt was made to allow Congress members to enter the legislature. On January 1, 1923, however, the formation of the Swaraj Party was announced by Deshabandhu C. R. Das, Pandit Motilal Nehru, Hakim Ajmal Khan and others. Throughout 1923, the influence of the Swaraj Party increased. No-changers began to lose ground. The Swaraj

Party won a large number of seats in the elections. In September, 1923, at a special session of the Congress at Delhi, Maulana Mohammad Ali announced that he had received a telepathic message from Gandhiji approving the modification of the triple boycott which included the boycott of Councils. The annual session at Coconada, however, formally reaffirmed the triple boycott, including the boycott of the Councils. The Swaraj Party took its seats in the Assembly a few days later. Towards the end of 1924, a pact was made between Gandhiji and the Swarajists, which recommended the formal suspension of the non-co-operation programme and authorised the Swarajist Party to work in the legislatures on behalf of the Congress and as an integral part of the Congress. The annual Congress session at Belgaum formally adopted the pact. On May 1, 1925, Gandhiji in an important speech at Calcutta stressed the necessity of concentrating on a constructive programme, the three main items of the programme being, (1) Hindu-Muslim unity, (2) removal of untouchability and (3) the use of the spinning wheel. Towards the end of July, 1925, a month after Deshabandhu's death, at a meeting of the Swarajists and the Working Committee at Calcutta, Gandhiji placed the entire Congress machinery at the disposal of the Swarajist leader, Pandit Motilal Nehru. Thereafter he withdrew from active politics.

Simon Commission & After—The Simon Commission was announced on November 8, 1927. The Commission was to report, *inter alia*, on the extent to which it was desirable to introduce responsible government in India. The Congress boycotted the "all-white" Commission. Mr. Jinnah and some of his followers also declared for boycott of the Commission. The Commission arrived in India on February 2, 1928.

An All-Parties Conference met in February, 1928, and appointed the Nehru Committee to draft a report embodying

the principles of a constitution for India. The report of the Committee, called the "Nehru Report", was India's answer to Lord Birkenhead's challenge to Indian politicians to produce a constitution which could gain the assent of all the interests in the country. The report was based on the principle of Dominion Status. At the Calcutta Congress in 1928, a resolution which rejected Dominion Status and claimed complete independence was defeated. The session is also important because Gandhiji who returned to politics in that year participated in it. It was, however, resolved that the Congress would not be bound by the constitution if it was not accepted on or before December 31, 1929, that is, if the British Government did not concede Dominion Status by that date.

On October 31, 1929, an Extraordinary Gazette announced the recognition of Diminion Status as the goal of Indian political development. It was also announced that after the report of the Simon Commission had been published, a Round Table Conference would be held.

The Lahore Congress in 1929 under the presidentship of Jawaharlal Nehru rejected the Round Table Conference, adopted the independence resolution, and urged the Congressmen to devote their exclusive attention to the attainment of complete independence. The All-India Congress Committee was also authorised to launch upon a programme of civil disobedience, whenever it deemed fit.

Civil Disobedience—On March 12, 1930 Gandhiji started his famous Dandi March to break the salt laws. India was thrown once more into turmoil. A programme was laid down by Gandhiji and instructions were issued for the preparation of contraband salt, for picketting liquor shops and foreign cloth shops, spinning and burning of foreign cloths, boycott of schools and colleges and resignation of Government service.

The masses again responded with wild enthusiasm. Terrible police repression let loose on them could not cow them down. A number of areas in the country went beyond the reach of the Government and had to be recaptured. Martial law and ordinances became the order of the day. At several places police opened fire on unarmed crowds. The movement grew at a terrible pace. Gandhiji was arrested on May 5. In June the Congress was declared illegal.

The first R.T.C. conference was inaugurated in London on November 12, 1930. The Congress was unrepresented in it. The conference ended on January 19, 1931.

The bureaucracy was feeling the necessity of a compromise and Gandhiji and the members of the Working Committee were released. Gandhiji was authorised by the Committee to seek interviews with the Viceroy and after a long series of private interviews the famous Gandhi-Irwin Pact was signed. The main terms of the Pact were effective discontinuance of the Civil Disobedience Movement, the general release of political prisoners and the participation of the Congress in the Round Table Conference.

At the end of August, 1931, Gandhiji left for England to attend the Round Table Conference and returned in December. On his return he was compelled to revive Civil Disobedience on account of the action taken by the Government in the meantime in the U.P., the Frontier Province and Bengal. He was again arrested in January, 1932.

The Communal Award was announced in August, 1932. This was followed by Gandhiji's fast and the "Poona Pact".

The Civil Disobedience Movement was finally suspended on April 7, 1934. On June 6, the Government of India withdrew the ban on Congress organisations.

The Government of India Act was passed in 1935. The Congress at its Faizpur session in December, 1936, affirmed its determination to combat and end the new constitution. In August, 1936, the Congress had already issued an election manifesto in which it stated that the purpose of sending Congressmen to the Legislatures was ending the constitution.

The elections to the Provincial Legislatures were completed by the end of February, 1937. The Congress at first formed ministry in six provinces and later in seven provinces. Netaji Subhas Chandra Bose was elected President of the Congress in 1938 and also in 1939, but after his second election he resigned owing to his differences with the Working Committee.

It may be mentioned that the Act of 1935 had two parts, one dealing with an All-India Federation and the other with Provincial Autonomy. It was only the latter part which was brought into force in 1937. For various reasons the enforcing of the Federal part had to be postponed till it was suspended on the out-break of World War II.

The World War II broke out in September, 1939. India was immediately declared a belligerent country by the British Government without consulting the opinion of her people. The Congress Working Committee expressed their strong resentment at this. They called upon the British Government to declare their war aims unequivocally. They asked whether the war aims of that Government included "the treatment of India as a free nation whose policy will be guided in accordance with the wishes of her people". They firmly declared: "the Committee cannot associate themselves or offer any co-operation in a war which is conducted on imperialistic lines and which is meant to consolidate Imperialism in India and elsewhere."

The British Government, however, gave no such assurances as were asked for by the Congress. They made

only some vague promises to the effect that at the end of the war they would be willing to consult the various interests in India to make such modifications in the Act of 1935 as might seem desirable. The Congress, thereafter, called upon the ministries in the provinces to resign. There were Congress Governments in eight provinces and all of them resigned. Only the three non-Congress Provincial Governments *viz.* those in Sind, Punjab and Bengal remained in Office.

The country began to seethe with discontent. But though some political leaders like Netaji Subhas Bose urged the Congress and Mahatma Gandhi to start a mass struggle taking advantage of the situation brought about by Britain's entanglement in the War, no such movement was started. Gandhiji started an Individual Civil Disobedience movement. The participants in the movement would openly address people preaching non-co-operation with the Government's war effort and thereby court arrest.

In December 1941, Japan joined the war against America and Britain. The Japanese forces advanced swiftly all over the South-East Asian countries and the tide of their conquest rolled at a tremendous speed towards Burma and India. Singapore fell in February, 1942, and the British Empire in India was gravely threatened. At this time the British Government felt the necessity of making a fresh endeavour to win the co-operation of the Indian people in the War against the Axis Powers.

The Cripps Mission—The Cripps Mission was announced on March 11, 1942. Sir Stafford Cripps arrived in New Delhi on March 23 with some proposals from the British Government to remove the Indo-British stalemate. His proposals had two parts, one dealing with the long term question of Indian freedom and the other with the short term one of an interim Government at the Centre. As regards the long

term plan, it was proposed to set up a Constituent Assembly at the end of the War. The members of the Assembly were to be elected by the entire membership of the Lower Houses of the Provincial Legislatures acting as a single electoral college. The new body, it was laid down in the proposals, would be in number about 1/10 of the number of the electroal college. The States were to send representatives to this body in the same proportion. His Majesty's Government undertook to accept and implement the Constitution framed by the Constituent Assembly subject to the following conditions:—

Any province which was not prepared to accept the constitution was to be free to retain its constitutional position existing at that time. With such non-acceding Provinces the H. M. G. could enter into separate constitutional arrangements. A treaty would be signed between the H. M. G. and the constitution-making body, which would cover all necessary matters arising out of the complete transfer of power, such as matters relating to the minorities. It was laid down that there will be no restriction on the power of the Indian Union to decide its future relationship to other members of the British Commonwealth. Approprite revision of the treaties with the Indian States would be made in the new situation.

As for the short term arrangement, there was to be an interim Government which would organise the military, moral and material resources of India to help the war effort. The responsibility for the defence of India and its control would of course lie with the British Government.

Prolonged negotiations took place between Sir Stafford and the leaders of the Indian National Congress and also of the Muslim League on these proposals. But the talks ended in complete failure. The main objections of the Congress to these proposals were three-fold. As the resolution

adopted by the Congress Working Committee on April 11, 1942 stated, the Committee felt that in the situation the country was at that time, the immediate counted more than the ultimate. While the British Government recognised the right of self-determination for the people of India, the question of freedom was relegated to an uncertain future. And as regards the interim arrangement which was more important than the promise of ultimate freedom, the interim Government that was to be set up would be given no real power. The Committee felt that defence covers in war-time every aspect of life and to take away defence from the sphere of responsibility would mean the total denial of power. Secondly, the Committee said, by recognising beforehand the principle of non-accession for a province, the proposals had gone against the ideal of a United India and were likely to encourage separatist tendencies. Thirdly the future constitution-making body would not be a homogenous body but would contain a large non-representative element *viz.* the representatives of the States. These representatives would not be elected by the people. They would be nominated by the rulers. This meant, the Committee argued, "the complete ignoring of the ninety millions of the people of the Indian States and their treatment as commodities at the disposal of their rulers." It also became evident in course of the negotiations that the interim Government would not function as a cabinet but would be only a slightly modified version of the Governor-General's Executive Council. All these reasons impelled the congress to reject the proposals.

The Muslim League rejected the Cripps Proposals mainly on the ground that though they envisaged the possibility of more than one Union in India they did not clearly concede the principle of the division of India on communal lines and that in the Constituent Assembly, as provided for

in the proposals, the Muslims would be a minority of 25 per cent. As the Constituent Assembly would take decisions by a simple majority vote, the League felt, that would result in the Muslims being at the mercy of the Hindus.

The Cripps proposals were not open to modification. The talks, therefore, failed and the deadlock continued.

It may be mentioned that during the thirties there had developed in the country an aggressive Muslim politics based on the two-nation theory. The Muslim League under the leadership of Mr. M. A. Jinnah had become the champion of this aggressive communalism. In 1940 the League passed the famous Pakistan resolution in its Lahore session. The resolution said that no constitutional scheme would be workable in the country or acceptable to Muslims unless the Muslim majority areas were constituted into independent States. It is this demand for division of India and the creation of Pakistan which became in subsequent years the sole basis of League Politics.

The August Revolution—The months following the failure of the Cripps proposals were marked by great anxiety and discontent in the country. On August 8, 1942, the All India Congress Committee at its Bombay session passed the momentous resolution which stressed the need for immediate ending of British rule in the country and sanctioned "the starting of a mass struggle on non-violent lines, on the widest possible scale." The Government reacted by immediately arresting all the members of the Congress Working Committee and also Mahatma Gandhi. A spontaneous revolutionary up-surge of the people swept the country from one end to the other and the Government set in motion its entire repressive machinery to put down the rebellion. Thousands were mercilessly shot down and wholesale arrests and detention without trial led to the jails being packed to over-flowing.

Practically all political groups and parties in India participated in the mass upsurge. There was, however, one notable exception. The Communist Party of India which always puts the interests of the Soviet Union before the national interests and takes its directives from the party dictators in that country did not join the struggle but helped the Government in whatever way it could in the prosecution of the war.

The period following the August Revolution was, from the point of view of national movement, one of despair and inactivity inside the country. But as the leaders were rotting in jail and the people remained plunged in despondency, outside the country a glorious chapter of our struggle was being written in the same period by the Indian National Army under the leadership of Netaji Subhas Chandra Bose. Netaji who had disappeared from the country in 1941 proclaimed the formation of the Azad Hind Government on October 21, 1943 and led an army, the I.N.A., against the British forces in Burma. The I.N.A. was raised from the Indians in South-East Asia and the Indian war prisoners captured by the Japanese. Netaji's aim was to enter India with the Liberation Army and to create a revolution against the British rule. The I.N.A. had advanced a long way towards India through Burma and at one place even reached the soil of India but eventually on account of the lack of equipment it was forced to withdraw and surrender.

Mahatma Gandhi was released in the middle of 1944. In September, 1944 negotiations took place between Mahatma Gandhi and Mr. Jinnah for a solution of the communal question and to explore the possibilities of cooperation between the League and the Congress in solving the political deadlock in India. But these negotiations which were based on a formula evolved by C. R. in March, 1944 bore no fruit. Mr. Jinnah insisted on the acceptance of the

two-nation theory by Mahatma Gandhi and also the acceptance of the Pakistan demand. Gandhiji was unable to accept the former and, as regards the division of India, he took the stand that the division should be made after the wishes of all the inhabitants of the areas concerned had been ascertained through a plebiscite. Mr. Jinnah would not agree to this.

The Wavell Plan—On June 14, 1945 Mr. Leopold Amery, the Secretary of State for India made a statement in the House of Commons embodying some proposals for breaking the deadlock in India. The Statement after expressing the British Government's anxiety to help the Indians "in the working out of a new Constitutional settlement" went on to say that the offer of 1942 (the Cripps proposals) still stood. The hope was expressed that the political leaders would come to an agreement among themselves as to the procedure for determining the permanent future form of Government. The H. M. G. were desirous to make possible a step forward if the Indian parties were "prepared to agree to their suggestions and to co-operate in the successful conclusion of the war against Japan as well as the reconstruction in India which must follow the final victory." "It is proposed", the Statement said, "that the Executive Council should be reconstituted and that the Viceroy should in future make his selection for nomination to the Crown for appointment to his Executive from amongst leaders of Indian political life at the Centre and in the provinces, in proportions which would give a balanced representation of the main communities including equal proportions of Moslems and Caste Hindus."

To hold negotiations for the proposed expansion of the Executive Council, invitations were sent by Lord Wavell to leaders at the Centre and in the Provinces including Mahatma Gandhi and Mr. Jinnah. Negotiations took place

for nearly a month but they ultimately broke down owing to the disagreement between the main parties regarding the composition of the Council. Explaining the reasons for the League rejection of the Viceroy's proposal regarding the composition of the Council, Mr. Jinnah said that acceptance of the proposal would have reduced the League to a minority of one-thrid in that body. He also complained that the Viceroy wanted to include non-League Muslims in the Council who were to be chosen by Congress and the Punjab Muslims (under the leadership of the then Chief Minister of the Punjab, Malik Khizir Hyat Khan). When the talks finally proved abortive, the Congress President asked the Viceroy to take a step forward in spite of the League intransigence. Lord Wavell, however, declined to do so.

The war with Japan officially ended at midnight on August 14, 1945. The General Elections in the United Kingdom which were held a few months later returned a Labour Government to Power with Mr. Clement Attlee as the Prime Minister. The Labour Government seemed from the very beginning to be determined to transfer power to Indian hands.

The new elections to the Centre and the Provincial legislatures in India were held at the end of 1945 and early in 1946.

The Cabinet Mission—On February 19, 1946, Lord Pethik Lawrence, the new Secretary of State for India announced in the House of Lords the decision of the British Government to send out a special Mission of Cabinet Ministers to help Lord Wavell in his attempts to resolve the constitutional dead-lock in India. The Mission consisting of Lord Pethick Lawrence himself, Sir Stafford Cripps, the President of the Board of Trade and Mr. A. V. Alexander, the First Lord of the Admiralty reached New Delhi on March 24.

The three Ministers along with Lord Wavell immediately began exploratory talks with Indian leaders. The two major parties, however, failed to come to any agreement on the fundamental constitutional issues and the Cabinet Delegation lost all hope of bringing about such agreement by their efforts. The Delegation then put forward their own formula for solving the vexed problem. This formula was embodied in a joint statement issued by the Viceroy and the Cabinet Mission on May 16, 1946.

The Statement of May 16, after pointing out the impracticability of the Pakistan scheme made the following suggestions for the solution of the Indian problem.

"(1) There should be a Union of India, embracing both British India and the States, which should deal with the following subjects: Foreign affairs, Defence and Communications; and should have the powers necessary to raise the finances required for the above subjects.

"(2) The Union should have an Executive and a Legislature constituted from British Indian and States representatives. Any question raising a major communal issue in the Legislature should require for its decision a majority of the representatives present and voting of each of the two major communities as well as a majority of all the members present and voting.

"(3) All subjects other than the Union subjects and all residuary powers should vest in the Provinces.

"(4) The States shall retain all subjects and powers other than those ceded to the Union.

"(5) Provinces should be free to form Groups with executives and legislatures, and each Group

could determine the Provincial subjects to be taken in common.

"(6) The constitution of the Union and of the Groups should contain a provision whereby any Province could, by a majority vote of its Legislative Assembly, call for a reconsideration of the terms of the constitution after an initial period of 10 years and at 10-yearly intervals thereafter."

As regards the constitution-making machinery, the statement suggested that the Legislative Assemblies in provinces would elect the members of that body on the basis of one representative for one million of the population, the Muslim and Sikh legislators electing the quota of their communities determined on this population basis. Others will elect the representatives for the rest of the population. The election of the representatives of the States was left to be settled by consultation. It was then laid down by the statement that the representatives thus chosen would divide themselves into three sections A, B and C. The section A would comprise the representatives of Madras, Bombay, United Provinces, Bihar, Central Provinces and Orissa; Section B would consist of the Punjab, N. W. Frontier Province and Sind; Section C would comprise Bengal and Assam. "These Sections shall proceed to settle the Provincial Constitutions for the Provinces included in each Section, and shall also decide whether any Group Constitution shall be set up for these Provinces and, if so, with what provincial subjects the Group should deal." The representatives of the Sections and the Indian States were then to reassemble and settle the Union Constitution.

Table of Representation

SECTION A

Province	*General*	*Muslim*	*Total*
Madras ..	.. 45	4	49
Bombay ..	.. 19	2	21
United Provinces	.. 47	8	55
Bihar ..	.. 31	5	36
Central Province	.. 16	1	17
Orissa ..	.. 9	0	9
TOTAL	.. 167	20	187

SECTION B

Province	*General*	*Muslim*	*Sikh*	*Total*
Punjab ..	.. 8	16	4	28
N.-W. Frontier Province	.. 0	3	0	3
Sind ..	.. 1	3	0	4
TOTAL	.. 9	22	4	35

SECTION C

Province	*General*	*Muslim*	*Total*
Bengal ..	.. 27	33	60
Assam ..	.. 7	3	10
Total	.. 34	36	70

Provinces were given power to opt out of the Groups by a decision of their new legislatures after the general election under the new constitution.

Apart from this scheme, a plan for an interim Government was also envisaged in the statement.

In a memorandum on States' Treaties and Paramountcy issued on May 12, the Cabinet Mission had declared that the British Government could not and will not in any

circumstances transfer Paramountcy to an Indian Government. The memorandum made it clear, however, that when a new self-governing Government or Governments came into being in British India it would no longer be possible for the British Government to carry out the obligations of Paramountcy. In such a situation all the rights surrendered by the States to the Paramount Power would return to the States. The memorandum concluded thus: "Political arrangements between the States on the one side and the British Crown and the British India on the other will thus be brought to an end. The void will have to be filled either by the States entering into a federal relationship with the succession Government or Governments in British India, or failing this, entering into particular political arrangements with it or them."

The Muslim League Council adopted a resolution on June 6, which, after strongly criticising the scheme of May 16 for non-acceptance of the principle of Pakistan, accepted the scheme in its entirety. The Congress Working Committee in a resolution adopted on June 26 accepted the scheme partially. The Committee accepted only the part dealing with the Constitution-making body. They, however, placed their own interpretations on some parts of the statement of May 16, particularly on the clauses relating to Grouping of the provinces. The Committee held that grouping could not be compulsory as it went against the fundamental principle of provincial autonomy. The Committee rejected the interim Government scheme, because the clarifications given to them regarding the matter were entirely unacceptable to them.

The Sikhs, it may be mentioned, rejected the scheme in its entirety as they felt that the grouping of the provinces as envisaged in the scheme would be seriously detrimental to their interests.

The All India Congress Committee, meeting in Bombay early in July, ratified the Working Committee's resolution of June 26.

Meanwhile the Viceroy issued instructions to the Governors to take the necessary steps for the election of the members of the Constitution-making body. The elections took place in July.

On the eve of the Cabinet Mission's departure from India, in a joint statement the Mission and the Viceroy expressed their gladness that the constitution-making could now proceed with the consent of the major parties. They, however, regretted that it had not been so-far possible to form an Interim Coalition Government. They further stated that, after the elections to the Constituent Assembly had taken place, the negotiations would be renewed for the formation of such a Government.

Mr. Jinnah felt insulted at the abandonment although temporary—of the interim Government plan and charged Lord Wavell with having gone back on his word. On July 29, the Council of the Muslim League passed a resolution withdrawing the League acceptance of the Cabinet Mission Plan. They also passed the famous Direct Action resolution. This resolution charged the Congress with intransigence and the British Government with breach of faith with Muslims and stated that the time had come for the League to resort to direct action to achieve Pakistan. The resolution authorised the Working Committee to prepare forthwith a programme of direct action. August 16 was fixed as the Direct Action Day.

On August 16, Hindu-Muslim riots on an unprecedented scale broke out in Calcutta. Thousands of people of both communities lost their lives in the disturbances.

On August 12, the Viceroy invited Pandit Nehru, now President of the Congress, to form an Interim Government.

The Government formed by Pandit Nehru took office on September 2. The League did not join this Government. The members of the Interim Government were Pandit Nehru, Sardar Vallabhbhai Patel, Dr. Rajendra Prasad, Mr. Asaf Ali, Mr. C. Rajagopalachari, Mr. Sarat Chandra Bose, Dr. John Matthai, Sardar Baldev Singh, Shaffat Ahmed Khan, Mr. Jagjivan Ram, Syed Ali Zaheer and Mr. Cooverji Hormusji Bhabha.

On October 13, however, the Working Committee of the League decided to accept the Viceroy's offer to join the Interim Government. On October 15, five members of the League were included in the Interim Government. These five members were Mr. Liaquat Ali Khan, Mr. I. I. Chundrigar, Mr. Abdur Rab Nistar, Mr. Ghaznafar Ali Khan and Mr. Jogendra Nath Mondal. To enable the necessary adjustments to be made in the cabinet, three members of of the body viz. Mr. Sarat Chandra Bose, Sir Shaffat Ahmed Khan and Syed Ali Zaheer resigned.

The Constituent Assembly met for the first time in New Delhi on December 9, 1946. The League did not join it. The League boycott of the Assembly was mainly due to its differences with the Congress regarding the interpretation of the Cabinet Mission Plan of May 16, particularly the grouping clauses in it.

On February 20, Mr. Attlee, the British Premier made his momentous 'Quit India' statement. The statement said that the state of uncertainty existing in India at that time was fraught with danger and declared: "His Majesty's Government wish to make it clear that it is their definite intention to take necessary steps to effect the transference of power to responsible Indian hands by a date not later than June, 1948". The statement after referring to the H. M. G's earlier decision to recommend to Parliament a constitution worked out according to the Cabinet Mission

Plan by a fully representative Constituent Assembly, said: ".....if it should appear that such a constitution will not have been worked out by a fully representative Assembly before the time mentioned in Paragraph 7 (June, 1948) His Majesty's Government will have to consider to whom the powers of the Central Government in British India should be handed over, on due date, whether as a whole to some form of Central Government for British India, or in some areas to the existing Provincial Governments, or in such other way as may seem most reasonable and in the best interests of the Indian people." As regards the States, the statement reiterated His Majesty's Government's intention not "to hand over their powers and obligations under Paramountcy to any Government of British India".

The statement also contained the announcement of the British Government's decision to terminate the war-time appointment of Lord Wavell as Viceroy of India and to appoint as his successor Admiral the Viscount Mountbatten. This step, it was said, was necessitated by "the opening of a new and final phase in India."

Lord Mountbatten arrived in New Delhi on March 24, 1947. Immediately after his arrival he made the declaration that the solution of the Indian problem must be reached within the next few months. A series of conferences with the Indian leaders followed. In the middle of May he flew to London and came back towards the end of the month. Meanwhile, a vigorous agitation for the partition of Bengal and Punjab had grown up and it became evident that the new plan of H.M.G. would try to cut the Gordian Knot of the Indian problem by partitioning India.

The Mountbatten Plan—On June 3, a statement of His Majesty's Government which embodied their latest plan for the solution of the Indian problem was broadcast to the people of India. After expressing the desire of the British

Government that power should be transferred in India according to the wishes of the people, the statement said that it was not their intention to interrupt the work of the existing Constituent Assembly. The Constitution framed by the Assembly, however, could not be imposed on parts of the country unwilling to accept it. To ascertain whether such areas wanted a new Constituent Assembly or not the following procedure was laid down. The Provincial Legislative Assemblies of Bengal and the Punjab (excluding the European Members) would meet in two parts, one representing the Muslim-majority districts and the other the rest of the province. "The members of the two parts of each Legislative Assembly sitting separately will be empowered to vote whether or not the province should be partitioned. If a simple majority of either part decides in favour of partition, division will take place and arrangements would be made accordingly." In the event of partition being decided upon, each part of the Legislative Assembly would on behalf of the areas they represent decide whether they would join the existing Constituent Assembly or a new and separate one. The Legislative Assembly of Sind would at a special meeting take its own decision in the matter. A decision by referendum was provided for in the case of N. W. Frontier Province. The Muslim-Majority district of Sylhet would decide by a referendum whether it would join East Bengal or remain in Assam.

The statement made it clear that regarding Indian States the British Government's policy as contained in the Cabinet Mission Memorandum of May 12, remained unchanged. The statement also provided for the creation of a Boundary Commission to settle the details of the demarcation of boundary in case partition was decided upon.

The Statement finally said: "His Majesty's Government propose to introduce legislation during the current

session for the transfer of power this year on a Dominion Status basis to one or two successor authorities according to decisions taken as a result of this announcement. This will be without prejudice to the right of the Indian Constituent Assemblies to decide in due course whether or not the part of India in respect of which they have authority will remain within the British Commonwealth."

The All-India Congress Committee and the Muslim League Council accepted this plan on June 15 and June 9 respectively.

Partition of Bengal and the Punjab was decided upon according to procedure laid down in the June 3, plan. West Punjab and East Bengal decided to join the new Constituent Assembly on June 20 and June 23 respectively. Two Boundary Commissions for the division of Bengal and the Punjab were announced on June 30. The award of the Boundary Commissions was published on August 17. Sind and the N. W. Frontier Province decided to join the new Constituent Assembly. Sylhet joined East Bengal.

The Indian Independence Bill was presented to Parliament on July 4 and it became law on July 18. The Act established the Dominions of India and Pakistan as from August 15, 1947.

There took place throughout India in the year 1947, and particularly in the Punjab, communal riots of unparalleled dimensions. The Punjab riots began in February. Soon the entire province was engulfed in the most frenzied outbursts of violence, mass murder, kidnapping and looting. Thousands and thousands lost their lives and millions were uprooted. When the two newly-formed Governments came to power in the two Dominions they were faced with the task of transferring millions of refugees to their respective dominions from the other side of the border.

The States—It has been aptly said that when the British left India they followed a "Political Scorched Earth Policy." Mr. Attlee's declaration of February 20, 1947 contained the following:

"In regard to the Indian States, as was explicitly stated by the Cabinet Mission, H.M.G. do not intend to hand over their powers and obligations under Paramountcy to any Government of British India." Thus India was going to face complete disintegration, for under the policy outlined above the States were to be completely free to decide their future relations with the Government of India. Section 7 (1) (*b*) of the Indian Independence Act, 1947 laid down the following:

"The suzerainty of His Majesty over the Indian States lapses, (from August 15, 1947) and with it, all treaties and agreements in force at the date of passing of this Act between His Majesty and the rulers of Indian States, all functions exercisable by His Majesty at that date with respect to Indian States, all obligations of His Majesty existing at that date towards Indian States or the rulers thereof, and all powers, rights, authority or jurisdiction exercisable by His Majesty at that date in or in relation to Indian States by treaty, grant, usage, sufferance or otherwise."

When the Constituent Assembly of India was set up, it appointed a Negotiating Committee to settle the political relations with the States and also the question of their accession to India. Soon, a number of important States declared in favour of accession to India. The representatives of a number of States joined the Constituent Assembly even before August 15, 1947. After the passing of the Indian Independence Act almost all the States with the exception of those under the N. W. F. Agency, the Baluchistan Agency and Bahawalpur and Khairpur of the Punjab Agency joined the Indian Dominion. The States acceded only on three

subjects, namely, defence, external affairs and communications. The Dominion Legislature thus acquired the right to legislate on these three subjects with regard to the States. It may be mentioned in this connection that owing to the growth of an aggressively communal movement in Hyderabad the State had for a long time refused to accede to India. In September, 1948, the Government of India was forced to take military action against the State to clean up the communal gangsters.

The policy followed by the Government of India regarding the States has transformed the map of India to an amazing extent within a very short time. This policy may be briefly described as one of integration and democratisation. By following a judicious policy of pressure and persuation the Government have succeeded in merging a large number of small States in the various provinces. A large number of others have been grouped together to form Unions. Most of the Unions of States and Mysore, Kashmir and Hyderabad have been placed on a par with the Provinces. In the new Constitution, their position is almost exactly similar to that of the former Provinces.

The Indian Constituent Assembly—The inaugural meeting of the Constituent Assembly took place on December 9, 1946. On December 11, Dr. Rajendra Prasad was elected its permanent chairman. On December 13, Pandit Nehru moved the "Objectives Resolution" in the Assembly, which was passed on January 22, 1947. The resolution is as follows:—

> "The Constituent Assembly declares its firm and solemn resolve to proclaim India as an independent, sovereign republic and to draw up for her future Government a Constitution: wherein the territories that now comprise British India, the territories that now form the Indian States and such

other parts of India as are outside British India and the States, as well as such other territories, as are willing to be constituted into the independent, sovereign India, shall be a Union of them all; and

"Wherein the said territories, whether with their present boundaries or with such others as may be determined by the Constituent Assembly and thereafter according to the law of the Constitution shall possess and retain the status of autonomous units, together with residuary powers, and exercise all powers and functions of Government and administration save and except such powers and functions as are vested in or assigned to the Union or as are inherent or implied in the Union or resulting therefrom; and

"Wherein all power and authority of the sovereign, independent India, its constituent parts and organs of Government, are derived from the people; and

"Wherein shall be guaranteed and secured to all the people of India justice, social, economic and political, equality of status, of opportunity, and before the law; freedom of thought, expression, belief, faith, worship, vocation, association and action, subject to law and public mortality; and

"Wherein adequate safeguards shall be provided for minorities, backward and tribal areas, and depressed and other backward classes; and

"Wherein shall be maintained the integrity of the territory of the republic and its sovereign rights on land, sea and air according to justice and the law of civilized nations; and this ancient land attain its rightful and honoured place in the world and make its full and willing contribution to the promotion of the world peace and the welfare of mankind."

The Constituent Assembly set up a number of Committees such as, the Union Subjects Committee, Provincial Constitution Committee, Union Constitution Committee and others and at a number of sessions held from time to time passed the main principles of the Constitution.

On August 29, 1947 the Assembly set up a Drafting Committee to prepare a draft Constitution embodying the principles adopted by the Assembly. The Committee consisted of the following:—Dr. B. R. Ambedkar (Chairman), Sri N. Gopalaswamy Ayyangar, Sri Alladi Krishna Swami Ayyar, Sri K. M. Munshi, Saiyid Mohammed Saadulla, Sri N. Madhava Rau, Sri D. P. Khaitan and Sir B. L. Mitter. Sir B. L. Mitter, however, could not attend the meetings of the Committee after its first sitting as he soon ceased to be a member of the Assembly.

The Drafting Committee submitted its draft on February 21, 1948.

On November 5 the Draft Constitution was introduced into the Assembly and after a general debate the Assembly took up the consideration of the Draft clause by clause. The consideration of the Draft was completed after a few sessions and the new Constitution of India was adopted on November 26, 1949. Some of the provisions of the Constitution came into force with immediate effect. But the rest, that is, the bulk of it was brought into force on January 26, 1950.

The Constituent Assembly held 11 sessions and sat altogether for 165 days. Of these, 114 days were spent for the consideration of the Draft. The total number of amendments to the Draft Constitution was 7,635 of which 2,473 were moved. The total number of seats in the Constituent Assembly was 307.

The Constituent Assembly took 2 years, 11 months and 18 days to complete its labours. It is interesting to compare this period with the time consumed by some other

well-known Constitutional Conventions. The American Convention took four months to complete its labours, the Canadian Convention took 2 years and 5 months, the Australian Convention nine years and the South African Convention one year.

CHAPTER II

THE GOVERNMENT OF INDIA ACT, 1919

BEFORE 1833 there were no legislative bodies in India. Legislative Councils then began to be gradually introduced in response to popular demand. These Councils used to have official majorities. It was only under the Morley-Minto Act of 1909 that the provincial legislatures came to be constituted with non-official majorities. At the Centre, however, an official majority was retained. The proportion of nominated official members was reduced under the Act of 1919 and the representative element increased.

Dyarchy—The Government of India Act, 1919 introduced what has come to be known as dyarchy. The dyarchy related to the provincial administrations and not to the Central Government of India. Under this system, the subjects to be dealt with by the Provincial Governments were divided into two parts, called the Transferred subjects and the Reserved Subjects. The Reserved Subjects were administered by the Governor with the aid of an Executive Council and the Transferred Subjects were dealt with by the Governor with the aid of Ministers. The members of the Executive Council were nominated to the Council and the Ministers were chosen by the Governor from among the members of the Legislature. The following were the Reserved Subjects: Administration of Justice, Police,

Irrigation and Canals, Drainage and Embankments, Water Storage and Water Power, Land Revenue Administration, Land Improvement and Agricultural Loans, Famine Relief, Control of Newspaper, Books and Printing Presses, Prisons and Reformatories, Borrowing money on the credit of the Province, Forests except in Bombay and Burma, Factory Inspection, Settlement of Labour Disputes, Industrial Insurance and Housing. The following were the Transferred Subjects: Local Self-Government including matters relating to Municipal Corporations and District Boards; Public Health, Sanitation and Medical Administration, including Hospitals and Asylums and provision for Medical education; Education of Indians with some exceptions; Public Works, including Roads, Bridges and Municipal Tramways, but excluding irrigation; Agriculture and Fisheries; Co-operative Societies; Excise; Forests in Bombay and Burma only; Development of Industries, including Industrial Research and Technical Education.

The Act also specified the Central Subjects thus clearly demarcating the Provincial and the Central spheres. The Central Subjects were: Military matters, Foreign Affairs, relations with the Indian States, Tariffs and Customs, Railways, Posts and Telegraphs, Income-tax, Currency, Coinage and Public Debt, Commerce and Shipping, Civil and Criminal Law, Census and Statistics, Public Service Commissions and others.

The power of legislation in residual matters was vested in the Centre.

In the financial sphere, the Central sources of revenue were income-tax, railway receipts, receipts from post and telegraphs, customs, the salt and the opium taxes. The chief sources of provincial revenue were land revenue, excise, receipts from the provincial taxes, stamp duties and income from forests and irrigation.

The Governor-General in Council—The Governor-General in Council was given very wide powers under the Act. If the Legislature, which consisted of two chambers, the Legislative Assembly and the Council of State, refused to introduce or pass any Bill recommended by the Governor-General, he could certify that the passage of the Bill was necessary for the peace, safety or interests of India and could make the Bill an Act by simply signing it. In relation to Reserved Subjects, the Provincial Governors were responsible to the Governor-General and the Secretary of State.

The Secretary of State—The Act vested in the Secretary of State-in-Council the powers of superintendence, direction and control over all acts and operations and concern which related to the Government or revenues of India or payments made out of these revenues.

The Central Legislature—The Central Legislature was bicameral. The Council of State consisted of not more than 60 members of which not more than 20 could be officials. The number of elected members was 33. The rest were nominated. The number of members in the Legislative Assembly was 140 of which 103 were elected. The rest were nominated. The number of officials in the nominated bloc was twenty-six.

Electorate—The communal electorate having been introduced by the Act of 1909, under the Act of 1919, too, the electorates were mainly based on the same communal principle. There were Muslim, non-Muslim, European and Anglo-Indian constituencies. There was also provision for electorates representing special interests—universities, trade and commerce and landholders.

The Provincial Legislatures—Under the Act at least 70 per cent of the members of the Provincial Legislative Councils were elected, the rest, including not more than 20 per cent officials, were nominated. In the matter of

legislation, the Governor possessed the power of 'Certification' whereby he could restore cuts in the budget made by the Legislature or certify as passed Bills thrown out by it. The Governor had no such power in respect of Transferred Subjects. The Legislative Council could remove the Ministry by an adverse vote but not the Executive Council appointed for a fixed period by the Crown. The Council had no power to vote or discuss certain items of the budget.

The Defect of the Dyarchy—The dyarchy did not work well. Every Government, like an organism is a unity and cannot be artificially divided without detriment to its efficient working. Moreover, it is easy to see, it is impossible to divide the subjects into water-tight compartments. For instance, Finance concerns every subject and as Finance was included in the Reserved side, the Ministers were at the mercy of the Executive Councillors for the necessary funds for their subjects. Complaints, not unjustified, used to be made that almost all the monies were spent for the Reserved Subjects and the nation-building activities under the charge of Ministers were very much starved for want of funds. The Congress was consistently opposed to dyarchy. The position of ministers under the system was not enviable. Most of them, having to depend greatly on the nominated bloc, used to be regarded as 'Yes-men' of the Government.

CHAPTER III

THE GOVERNMENT OF INDIA ACT, 1935 (Original)

On the basis of the results of the Round Table Conferences and the Communal Award given by the British Prime Minister, Ramsay MacDonald, the British Government issued their proposals for the new Constitution of India in the form of a White Paper. The Communal Award was given by the British Prime Minister owing to the failure of the two communities represented on the Round Table Conference to come to an agreement regarding the allocation of seats in the legislatures. The Award envisaged separate electorates for the depressed classes among the Hindus. This was regarded by Mahatma Gandhi as an attempt to split the Hindu Community. He declared that he would fast unto death if this provision about the separate electorates for the depressed classes were not modified. This threat resulted in an agreement between the communities concerned. This agreement has come to be known as the Poona Pact. The British Government accepted the Pact which was based on the principle of joint electorate between caste Hindus and the depressed classes. In the Constitution of 1935 this principle was incorporated.

A Joint Select Committee of Parliament examined the proposals of the White Paper and submitted its report in 1934. On the basis of this report a Draft Bill was prepared. This Bill was enacted into law as the Government of India Act, 1935.

It was this Act which was the Constitution of India from 1937 to August 14, 1947. From the 15th August, 1947, a modified version of that Act was the basis of India's constitution. The main provisions of the original Act are being summarised below.

The Federation—The Government of India Act, 1935 (Original) envisages a Federation of the provinces and territories in British India, and the States. The Act lays down that it shall be lawful for His Majesty to proclaim the formation of the Federation on an address being presented on that behalf by each House of Parliament if the rulers of a number of States which represent one half of the total population of the States and are entitled to half the seats allotted to them in the Upper Chamber in the Federal Legislature have acceded to the Federation. Because of the objections raised by various interests and parties in India to the scheme of Federation and also of the above condition remaining unfulfilled the Federal scheme could not be brought into operation in 1937 when the scheme of Provincial Autonomy under the Act was brought into force. The Federal scheme was postponed and a few weeks after the outbreak of World War II, on October 18, 1939, it was suspended. In a statement made on that date Lord Linlithgow, Governor-General of India declared: "His Majesty's Government recognise that when the time comes to resume consideration of the plan for the future Federal Government of India.....it will be necessary to reconsider in the light of the then circumstances to what extent the details of the plan embodied in the Act of 1935 remain appropriate." A modification of the Federal plan in future was thus contemplated.

The Governor-General—The Governor-General is made the key-stone of the Federal edifice. He is given very wide powers and responsibilities under the Act. He exercises on behalf of His Majesty the executive authority of the Federation. The executive authority of the Federation extends to all matters with respect to which the Federal Legislature has power to make laws and some other

matters relating to His Majesty's naval, military and air forces and the tribal areas.

The Governor-General is aided in the exercise of his functions by a council of ministers except in so far as he is required to exercise his function or any of them in his discretion. He exercises his discretion in the following matters—defence, ecclesiastical affairs and external affairs except the relation between the Federation and any part of His Majesty's Dominions. In these matters the ministers cannot advise him. The Governor-General has a number of special responsibilities regarding which he exercises his individual judgment *i.e.* he may consult the ministers but need not accept their advice. His special responsibilities are the following:—

(*a*) the prevention of any grave menace to the peace or tranquillity of India or any part thereof;

(*b*) the safe-guarding of the financial stability and credit of the Federal Government;

(*c*) the safeguarding of the legitimate interests of minorities;

(*d*) the safeguarding of the rights and legitimate interests of the members of the public services or their dependants;

(*e*) the prevention of commercial discrimination;

(*f*) the prevention of action which would subject goods of United Kingdom or Burmese origin imported into India to discriminatory or penal treatment;

(*g*) the protection of the rights of any Indian State and the rights and dignity of the rulers thereof;

(*h*) the securing that the due discharge of his functions with respect to matters with respect to which he is by or under this Act required to act in his discretion or to exercise his

individual judgment, is not prejudiced or impeded by any course of action with respect to any other matter.

The Act provides that in so far as the Governor-General is by or under this Act required to act in his discretion he shall be under the general control of the Secretary of State and also comply with the latter's particular directions issued from time to time. To assist him in the exercise of his discretionary functions he may appoint counsellors, not exceeding three in number.

The Governor-General is given very great powers of issuing ordinances and also to enact Acts in certain circumstances. These ordinances fall into two categories

(1) those that can be promulgated by the Governor-General during recess of the Federal Legislature;

(2) those that can be promulgated at any time by him.

(1) If at any time when the Federal Legislature is not in session the Governor-General is satisfied that circumstances exist which render it necessary for him to take immediate action, he may promulgate such ordinances as the circumstances appear to him to require. It is provided that he shall exercise his individual judgment as regards the promulgation of any such ordinance, if a Bill containing the same provisions would under this Act have required his previous sanction to the introduction thereof into the Legislature. It is further provided that he shall not promulgate any such ordinance without His Majesty's instructions if he would have deemed it necessary to reserve a Bill containing the same provisions for the signification of His Majesty's pleasure thereon. The ordinances have force and effect as Acts of the Federal Legislature. It is laid down that

the ordinances may be disallowed by His Majesty or may be withdrawn at any time by the Governor-General.

All such ordinances must, however, be laid before the Federal Legislature and will cease to operate at the expiration of six weeks from the reassembly of the Legislature or if before the expiration of that period resolutions disapproving it are passed by both Chambers.

(2) Again, if at any time the Governor-General is satisfied that circumstances exist which necessitate immediate action for the satisfactory discharge of his discretionary functions or those functions with respect to which he is required to exercise his individual judgment, he may promulgate such ordinances as the circumstances of the case may require. Any such ordinance will continue in operation for a period not exceeding six months but may, by a subsequent ordinance, be extended for a further period of six months. Such ordinances have force and effect as the Acts of the Federal Legislature and are subject to the provisions of this Act relating to the power of His Majesty to disallow Acts as if they were Acts of the Federal Legislature. They may be withdrawn at any time by the Governor-General. The functions of the Governor-General relating to the promulgation of such ordinances will be exercised by him in his discretion.

The Governor-General can assume extra-ordinary powers in certain special circumstances. If at any time the Governor-General is satisfied that a situation has arisen in which the Government of the Federation cannot be carried on in accordance with the provisions of this Act, he may by Proclamation declare that his functions shall, to such extent as may be specified by him, be exercised by him in his discretion. By proclamation he may assume to himself all or any of the powers vested in or exercisable by any Federal body or authority. Such Proclamations must be

communicated forthwith to the Secretary of State and must be laid by him before each House of Parliament. Any such Proclamation shall cease to operate at the expiration of six months but may be extended by Parliament.

The Federal Legislature—According to the provisions of the original Act of 1935, the Federal Legislature consists of His Majesty, as represented by the Governor-General and two Chambers, the Council of State and the House of Assembly.

The Council of State consists of 156 representatives of British India and not more than 104 representatives of the Indian States. Of the 156 seats for British India 6 seats are to be filled up by nomination by the Governor-General in his discretion. The rest 150 seats are to be allocated as follows: General 75, Muslim 49, Sikhs 4, Scheduled Castes 6, Women 6. These seats are to be filled by direct election by voters of high property and other qualifications. 1 Anglo-Indian, 7 Europeans and 2 Indian Christians are to be chosen by the representatives of the respective categories in the Provincial Legislatures.

The House of Assembly or the Federal Assembly consists of 250 representatives of British India and not more than 125 representatives of the Indian States. The distribution of the British Indian seats, which is on a communal basis, is as follows:—The total general seats 105, of this 19 are reserved for the Scheduled Castes; Muslim 82, Sikh 6, Anglo-Indians 4, Europeans 8, Indian Christian 8. The General, Muslim and Sikh seats are to be filled by the representatives of these communities in the Provincial Assemblies. The Europeans, Anglo-Indians, Indian Christians and women representatives are to be chosen by electoral colleges of members of these groups in the Provincial Assemblies. Some seats are allocated to representatives of commerce and industry, landholders and representatives of labour. These

are to be respectively filled by Chambers of Commerce, land-holders and labour organisations.

As regards the seats allotted to the States, these are to be filled by persons appointed by the Rulers.

The Council of State is a permanent body and not subject to dissolution, the members being chosen for nine years, one-third of them retiring every third year. The Federal Assembly is to continue for five years unless sooner dissolved. Annual sessions of this body are required; subject to this provision the Governor-General can summon, or prorogue the Chambers or dissolve the Federal Assembly at his discretion.

Financial Bills cannot be introduced except on the recommendation of the Governor-General and cannot be introduced in the Council of State. All other Bills can originate in either Chamber. The powers of both Chambers in relation to consideration and passing of Bills are identical. To meet cases of disagreement between the Chambers, joint sittings are provided for.

The control of the Federal Legislature on the Federal Government's expenditure is extremely limited. The following expenditures which are called expenditure charged on the revenues of the Federation cannot be voted upon by the Legislature:—(*a*) the salary and allowances of the Governor-General and other expenditure relating to his office for which provision is required to be made by Order in Council; (*b*) debt charges for which the Federation is liable, including interest, sinking fund charges and redemption charges, and other expenditure relating to the raising of loans and the service and redemption of debt; (*c*) the salaries and allowances of ministers, of counsellors, of the financial adviser, of the advocate-general, of chief commissioners, and of the staff of the finacial adviser; (*d*) the salaries, allowances and pensions payable to or in respect of judges

Table of Seats—Provincial Legislative Assemblies

Province	Total Seats	General Seats		Seats for representatives of backward areas and tribes	Sikh Seats	Muhammadan Seats	Anglo-Indian Seats	European Seats	Indian Christian Seats	Seats for representatives of Commerce, Industry, Mining, and Planting	Landholders Seats	University Seats	Seats for representatives of labour	Seats for women				
		Total of General Seats	General Seats reserved for Scheduled Castes											General	Sikh	Muhammadan	Anglo-Indian	Indian Christian
1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19
Madras	215	146	30	1	..	28	2	3	8	6	6	1	6	6	..	1	..	1
Bombay	175	114	15	1	..	29	2	3	3	7	2	1	7	5	..	1	..	..
Bengal	250	78	30	..	..	117	3	11	2	19	5	2	8	2	..	2	1	..
United Provinces	228	140	20	..	..	64	1	2	2	3	6	1	3	4	..	2	..	..
Punjab	175	42	8	..	31	84	1	1	2	1	5	1	3	1	1	2	..	..
Bihar	152	86	15	7	..	39	1	2	1	4	4	1	3	3	..	1	..	..
Central Provinces & Berar ..	112	84	20	1	..	14	1	1	..	2	3	1	2	3	..	..	..	..
Assam	108	47	7	9	..	34	..	1	1	11	..	..	4	1	..	..	..	..
North West Frontier Province	50	9	..	..	3	36	..	..	..	..	2	..	..	..	..	..	..	..
Orissa	60	44	6	5	..	4	..	..	1	1	2	..	1	2	..	..	..	..
Sind	60	18	..	..	..	33	..	2	..	2	2	..	1	1	..	1	..	..

Table of Seats—Provincial Legislative Councils

Province	*Total of Seats*	*General Seats*	*Muhammadan Seats*	*European Seats*	*Indian Christian Seats*	*Seats to be filled by Legislative Assembly*	*Seats to be filled by Governor*
1	2	3	4	5	6	7	8
Madras ..	Not less than 54 Not more than 56	35	7	1	3	..	Not less than 8 Not more than 10
Bombay ..	Not less than 29 Not more than 30	20	5	1	..	..	Not less than 3 Not more than 4
Bengal ..	Not less than 63 Not more than 65	10	17	3	..	27	Not less than 6 Not more than 8
United Provinces	Not less than 58 Not more than 60	34	17	1	..	..	Not less than 6 Not more than 8
Bihar ..	Not less than 29 Not more than 30	9	4	1	..	12	Not less than 3 Not more than 4
Assam ..	Not less than 21 Not more than 22	10	6	2	..	..	Not less than 3 Not more than 4

of any High Court; (*e*) expenditure for the purpose of the discharge by the Governor-General of those functions with respect to which he is required to act in his discretion, namely, defence, external affairs, ecclesiastical affairs and matters relating to tribal areas; (*f*) the sums payable to His Majesty under this Act out of the revenues of the Federation in respect of the expenses incurred in discharging the functions of the Crown in its relations with the Indian States; (*g*) any grants for purposes connected with the administration of any areas in a province which are for the time being excluded areas; (*h*) any sums required to satisfy any judgment, decree or award of any court or arbitral tribunal; (*i*) any other expenditure declared by this Act or the Federal Legislature to be so charged.

It is laid down by the Act that items (*a*) and (*f*) of the list mentioned above cannot even be discussed by the Legislature. All other items can be discussed but, as has been said above, cannot be voted upon. It may be noted that these items of expenditure account for over 80 per cent of the total expenditure of the Central Government of India. As the control over finance by the Legislature is an essential feature of democracy, it should be clear that the Act which placed over 80 per cent of the Federal expenditure beyond the Legislature's control cannot by any stretch of imagination be called democratic. It made a mockery of responsible Government and democracy. Even regarding those expenditures which are subject to the vote of the Assembly, the Governor-General is given power in the Act to restore demands refused by the Legislature or cuts made by it in matters affecting his special responsibilities. The Governor-General's discretionary powers, his special responsibilities and other statutory limitations on the power of the Federal Legislatures reduce it to a practically powerless body. The

Act also makes it clear that nothing in it affects the power of Parliament to legislate for British India.

The Amendment of the Constitution —The Federation is given no constituent power under the Act. Such power vests in the Imperial Parliament. The Crown in Council is empowered to make some minor amendments in certain circumstances.

Distribution of Legislative Powers —The Act of 1935 (original) clearly demarcates the spheres of Federal and Provincial legislation. There are lists specifying the subjects: the Federal Legislative List, the Concurrent Legislative List and the Provincial Legislative List. Ordinarily in case of inconsistency between Federal and Provincial laws, the Federal law prevails. The power of residual legislation is, strangely, vested in the Governor-General. It is laid down that the Governor General by a public notification may empower either the Federal Legislature or a Provincial Legislature to enact laws with respect to any matter not enumerated in any of the Lists mentioned above. As for the States, the Federal Legislature cannot make laws for them except in accordance with their Instruments of Accession and any limitations contained therein.

Unsatisfactory Character of the Federal Scheme —The Federal Scheme was opposed by almost every party or group in India. The Congress objected to the Federal Scheme on various grounds. The scheme, in the first place, did not envisage any real transfer of power to Indian hands. Secondly, the Federal legislature was saddled with an element of conservatism, namely, the States' representatives who, it was obvious, would always try to veto progress. In fact, under the provisions of the Act [sec. 6 (5)] constitutional advancement of India could be always vetoed by the States.

The Rulers of the States also objected to the Federal Scheme though on different grounds. They pointed out

that once they entered the Federation there was no provision that would enable them to come out of it. The Federation had great power of coercing them. In the Federal Legislature, as well as in the Federal Executive, the British Indian representatives, that is, the democratic elements would, it was obvious, predominate. These elemens might, it was apprehended by the States, influence the Viceroy to take steps which might impair their sovereignty.

Provincial Autonomy—The provisions of the Government of India Act, 1935 (original) dealing with Provincial Autonomy came into operation on April 1, 1937.

Provincial Autonomy is generally supposed to mean either of the two following things or both: (1) freedom from external control, (2) responsible Government inside the province. Provincial Autonomy under the Act of 1935, however, was neither free from external control nor did it grant fully responsible Government to the provinces so far as their internal administration was concerned. Wide powers were vested in the Governor, the Governor-General and also in the Crown and Parliament which were so to say, a negation of autonomy in the provinces.

The Governor—The following are the provisions of the original Act of 1935 relating to the position, powers and functions of the Governor:—

The Governor is appointed by His Majesty. The executive authority of a province is exercised on behalf of His Majesty by the Governor either directly or through officers subordinate to him. There is a council of ministers to aid and advise the Governor in the exercise of his functions except in so far as he is required to exercise his functions or any of them in his discretion. In many respects the powers of the Governor are similar to those of the Governor-General. The Governor, too, like the Governor-General has some discretionary powers and special

responsibilities. The Governor acts in his discretion in the following matters:

(1) To choose, summon and dismiss ministers; also to summon and prorogue the Chambers and to dissolve the Assembly;

(2) To prevent crimes of violence intended to overthrow the Government;

(3) To assent to Bills passed in the Legislature or to withhold assent thereform or to reserve the Bill for the Governor-General's consideration;

(4) To promulgate ordinances;

(5) To enact Acts in certain circumstances;

(6) To issue proclamations in order to take over the Government of the Province in case of failure of constitutional machinery;

(7) To give previous sanction to certain kinds of Bills;

(8) To exercise functions as agent to the Governor-General in relation to defence, external affairs, tribal areas and ecclesiastical affairs.

The Governor is given power to issue two kinds of ordinances. In matters affecting his discretionary functions and special responsibilities, the Governor can issue an ordinance at any time. Such an ordinance may continue in operation for a maximum period of six months but may, by a subsequent ordinance, be extended for a further period not exceeding six months. In other matters, the Governor can issue ordinances only when the legislature is not in session. These ordinances are issued at the instance of the ministers. All such ordinances must be laid before the Legislature and cease to operate at the expiration of six weeks from the reassembly of the Legislature or if a resolution disapproving it is passed by the Legislature.

The Governor has the following special responsibilities: (*a*) the prevention of any grave menace to the peace and tranquillity of the Province or any part thereof; (*b*) the safe-guarding of legitimate interests of minorities; (*c*) the securing to, and to the dependants of, persons who are or have been members of the public services of any rights, provided or preserved for them by or under this Act, and the safeguarding of their legitimate interests; (*d*) prevention of commercial discrimination; (*e*) the securing of the peace and good government of areas which by or under the provisions of the Act are declared to be partially excluded areas; (*f*) the protection of the rights of any Indian State and the rights and dignity of the ruler thereof; and (*g*) the securing of the execution of orders or directions lawfully issued to him by the Governor-General.

In exercising functions involving his special responsibilities, the Governor may consult his ministers but must exercise his individual judgment as to the action to be taken, *i.e.* he need not accept their advice. In his discretionary sphere, the ministers cannot advise the Governor. In the exercise of functions with respect to which the Governor has to act in his discretion or exercise his individual judgment, the Governor is under the general control of the Governor-General and must comply with particular directions issued by the latter from time to time.

Apart from his ordinance-making powers, the Governor has been given considerable legislative power. He can in his discretion either assent to a Bill or withhold assent therefrom. And no Bill becomes an Act unless it receives the Governor's assent. He can also reserve the Bill for the Governor-General's consideration. He may also return the Bill to the Chamber or Chambers for reconsideration. The Governor may stop the discussion relating to any Bill or clause or amendment in the Legislature on the ground that

it affects his special responsibility for the prevention of any grave menace to the peace or tranquillity of the Province or any part thereof. The Governor can also enact Acts in matters involving his individual judgment or discretion if he considers it to be necessary for the satisfactory discharge of his duties.

In case of failure of constitutional machinery, the Governor can take over the Government, *i.e.*, can assume to himself all or any of the powers vested in or exercisable by any Provincial body or authority.

The powers of the Governor, it is quite obvious, reduce provincial autonomy to a farce. His discretionary powers and special responsibilities 'cabine, crib and confine' the powers of the Legislature and the Ministry. Some of these powers and responsibilities are vaguely defined and can be interpreted to mean anything. Moreover, the Governor is the sole judge as to whether any particular matter falls within his discretionary sphere or affects any of his special responsibilities. Thus, the Governor can be a virtual dictator in provincial sphere if he chooses to be one.

The Provincial Legislatures under the (Original) Act, 1935— The Act provides that the Provincial Legislatures in six provinces, *viz.*, Madras, Bombay, Bengal, the United Provinces, Bihar and Assam are to be bi-cameral and in other Provinces *viz.*, Orissa, Sind, the Punjab, the N.W.F.P., and C.P. unicameral.

The number and composition, as specified in the Act, of members in the Upper Houses, called Legislative Councils, are given in the appended table. The Governor under the Act nominates a small percentage of members in the Legislative Council. In Bengal and Bihar a large percentage of seats are to be filled through election by the Legislative Assembly. There is no such provision in the case of the Councils in other Provinces, where all seats excepting those

to be filled by nomination are to be filled by direct election. High property and other qualifications are prescribed for the voters. The Councils are permanent bodies. The members are to hold their seats for nine years, one third of the total membership retiring every third year.

The Legislative Assembly is the Lower Chamber. It has a term of five years. The members of the Assembly are to be elected by communal electorates. The constituencies are mainly territorial. The distribution of seats in the Lower Chambers is as shown in the appended table.

The Upper Chambers have no initiative in Financial Bills. They have also no voice in the matter of grants. Subject to these provisions, a Bill can originate in either Chamber. A Financial Bill cannot be introduced or moved except on the recommendation of the Governor.

The control of the Legislature over finance is limited. The following items of expenditure, called expenditure charged on the revenues of the Province, are made non-votable: (*a*) The salary and allowances of the Governor and other exependiture relating to his office, (*b*) debt charges, (*c*) the salaries and allowances of ministers and of the Advocate-General, (*d*) salaries and allowances of the judges of any High Court, (*e*) expenditure for the administration of excluded areas, (*f*) any sums required to satisfy any judgment, decree or award of any court or arbitral tribunal, (*g*) any other expenditure declared by this Act or any Act of the Provincial legislature to be so charged.

The item (*a*) cannot even be discussed. As regards other expenditures, though they can be voted upon by the Assembly the Governor has the power to restore any cuts or any sums refused by the Assembly if he thinks it to be necessary for the due discharge of any of his special responsibilities.

No Bill is to be deemed as passed unless it is agreed to by both the Chambers. If a Bill which has been passed by the Legislative Assembly and transmitted to the Legislative Council is not presented for the Governor's assent within a period of twelve months, the Governor can summon the Chambers to meet in a joint sitting for the purpose of considering and voting on the Bill. Joint sessions may be summoned earlier if the Bill relates to Finance or any of the special responsibilities of the Governor.

The above makes it clear that the limitations on the powers of the Provincial Legislatures are very great. Moreover, the allocation of seats on a communal basis is such as cannot but prevent these Legislative bodies from correctly reflecting the true interests of the people. The Upper Chambers, again, are deliberately made reactionary bodies.

The Crown and the Secretary of State —The post of the Secretary of State was created in 1858. Under the Act of 1919, as has been pointed out, the Secretary of State was given all powers of superintendence and control over the Indian administration. In fact, the Central and Provincial Governments in India were only the agents of the Secretary of State under that Act. Under the Act of 1935, however, the position was changed. All rights, powers and jurisdiction over the Indian territories are resumed by the Crown under the Act. These are distributed between the Federation and the Units. The Crown's rights have been of two kinds—statutory and prerogative. Some of the statutory powers of the Crown have been already mentioned—for example, the power of appointment of the Governor-General and the Governors. The prerogatives of the Crown included the right of granting pardon and the granting of titles and also rights of war and peace.

As has been already mentioned, the Governor-General is placed by the Act under the control of the Secretary of

State in matters relating to the use of his discretionary powers and to his special responsibilities. The Secretary of State is given the power to make appointments to the I.C.S., the I.P.S. and the Indian Medical Service.

It will be seen that the Secretary of State, through his control over the Governor-General and the Governor, could practically control every aspect of the Indian administration.

The Secretary of State was responsible to Parliament of which he was a member. The Office of the Secretary of State was known as the India Office.

The Working of the Constitution—It was apprehended before the inauguration of the Constitution that the discretionary powers and the special responsibilities of the Governor under the Constitution of 1935 would reduce the Councils of Ministers in the Provinces to utter impotence. When, therefore, after the elections in 1937, which gave the Congress majority in six provinces, the Congressmen were called upon to form Ministries in these provinces, they refused to do so unless they were assured by the Governors that they would not interfere with the former. The Governors concerned refused to do so. And the Congress too refused to form Governments in those provinces. A deadlock ensued which was resolved on an assurance on behalf of the British Government, which, though it fell short of the assurance demanded by the Congress, made it clear that the Governors would not normally interfere with the Ministers by taking recourse to their special powers. The Congress agreed to work the Constitution after this assurance.

The councils of Ministers in the Provinces, it must be said, enjoyed greater power and initiative in actual practice than was supposed possible under the Act before it was brought into force.

The first major crisis in the working of Provincial Autonomy came in October, 1939, when in circumstances already mentioned the Congress Governments in eight Provinces resigned. When the new elections took place in 1946, the Congress formed Governments again in seven Provinces.

The Constitution of 1935 was, however, fundamentally such as could not satisfy the demands of the masses who wanted complete freedom. Real Provincial Autonomy has been installed only after the attainment of complete freedom and has been functioning since August 15, 1947.

The Central Government before August 15, 1947 —As the Federal scheme could not be introduced in the country the Central Executive and Legislature of India continued to be of the same features as under the Act of 1919 up to the 15th of August 1947. Since the inauguration of Provincial Autonomy in 1937, however, the relations between the Centre and the Provinces were governed by the provisions of the Act of 1935 relating to the distribution of powers. The Executive Council of the Governor-General was expanded during the war. An interim popular Government came to office in September, 1946. A fully responsible Government was installed at the Centre on the day of freedom.

CHAPTER IV

THE GENERAL FEATURES OF THE CONSTITUTION OF FREE INDIA

THE Constitution of Free India is federal in type. It envisages the establishment of a Federation consisting of a Central Government and a number of State Governments. An important thing to be noted about the Federation in India is that whereas in the case of other Federal Governments of the world a number of separate States combined to form the Federation, in India the process of development has been from a unitary Government to a federal one.

The term Federation has not, however, been used in the Constitution. The Drafting Committee in submitting the Draft Constitution to the President referred to the point and said, "Nothing much turns on the name, but the Committee has preferred to follow the language of the preamble to the British North America Act, 1867, and considered that there are advantages in describing India as a Union although its Constitution may be federal in structure." Apparently the Committee felt that there should be, even in the language of the Constitution, greater emphasis on the unity existing between the different parts of India than on their points of difference.

The Constitution creates a strong Centre and vests the residual power of legislation in the Central Legislature, called Parliament in the Constitution. Parliament and the State Legislatures are both sovereign in their respective spheres. The Constitution embodies three detailed legislative lists, namely, (*i*) the Union List, (*ii*) the State List and (*iii*) the Concurrent List. The distribution of legislative powers in the Constitution is, therefore, more or less of the Canadian type, the chief difference being that whereas in

Canada there are only two Concurrent subjects, namely, agriculture and immigration, the Concurrent List in the Indian Constitution contains as many as 47 subjects.

In one important respect the Constitution differs from all other federal constitutions of the world. Though the Constitution is of the federal type, it has been so framed that in times of emergencies it can be made to work as a unitary one. This is made possible by the emergency powers given in the Constitution to the central executive. In times of emergencies the President can assume extra-ordinary powers which have the effect of practically suspending the autonomy of the units. Such provisions do not exist in any other constitution of the world. The Indian Constitution thus aims at the establishment of a flexible Federation.

Under the Constitution, there is only one citizenship for the whole of India. This is an important point of difference with the Constitution of the United States. In the United States, there is a dual citizenship, namely, the U.S. citizenship and the citizenship of the States. The States in America can discriminate in favour of their own citizens in some political matters, such as, the right to vote and the holding of public office. No such thing will be possible in India, the Constitution recognising only one citizenship—the Indian citizenship.

Another important difference between the Constitution of free India and that of the United States is that whereas under the U.S. Constitution the central executive is of the Presidential type, in India the central executive will be of the Parliamentary type. That is, whereas in the U.S.A. the central executive is not responsible to the Legislature and cannot be removed by its vote, in India the central executive —or, to be more precise, the Cabinet—will be responsible to Parliament and will be removable from office by an

adverse vote of that body. A third point of difference between the two Constitutions is that in India the Centre will be a very strong one whereas in the U.S.A. the Centre is weak.

The Constitution vests the constituent powers in the Central Legislature. It is Parliament alone that can amend the Constitution. But true to the federal principles, the Constitution does not vest in the Centre the power of changing the division of powers. To make alteration in the division of powers and in some other matters, Parliament will require the consent of at least half the Legislatures of the autonomous States. The States are given no constituent powers. The Provinces of Canada and the States in the Commonwealth of Australia, it may be mentioned, enjoy the power of moulding their constitutions within the federal frame-work. Obviously such powers for the States have been regarded by the framers of the Indian Constitution as detrimental to the efficiency of the State as a whole and incompatible with a strong Centre.

The chief points of difference between the Constitution of India and the British Constitution are three in number. The Constitution of India is a written one, whereas the British Constitution is mainly unwritten. The British Constitution is unitary, the Indian Constitution is federal. Thirdly, the supremacy of Parliament is a basic principle of the British Constitution. The courts in England have no power to declare an Act of Parliament unconstitutional. But here in India the courts will have power to declare the Acts of Parliament and of other Legislatures to be void on the ground of their being unconstitutional. The third point is of course a corollary to the first two points.

Besides the division of powers a federal government has two other distinctive features, *viz.*, (1) supremacy of the Constitution and (2) a Supreme Court to decide disputes

between the Centre and the Units. In India, too, the Constitution will be the supreme law of the land and there will be a Supreme Court to decide the disputes that may arise between the Centre and the States regarding their respective jurisdictions.

The Constitution of India is the biggest and the most voluminous constitution in the world. It contains 395 Articles and 8 Schedules. Article 393 says that the Constitution may be called "the Constitution of India".

CHAPTER V

POWER DERIVED FROM THE PEOPLE

THE preamble to the Constitution of India which embodies the highest ideals of justice, liberty, equality and fraternity is as follows:—

We, the people of India, having solemnly resolved to constitute India into a Sovereign Democratic Republic and to secure to all its citizens:

Justice, social, economic and political;
Liberty of thought, expression, belief, faith and worship;
Equality of status and of opportunity; and to promote among them all
Fraternity assuring the dignity of the individual and the unity of the Nation;
In Our Constituent Assembly this twenty-sixth day of November, 1949, do Hereby Adopt, Enact and Give To Ourselves This Constitution.

The very first line of this preamble makes it clear that political power in the Indian Republic will be derived from the people. It will be seen that the preamble is more or less similiar to that of the American Constitution.

CHAPTER VI

THE UNION AND ITS TERRITORY

INDIA will be a Union of States. The States and territories of India will be the States and territories specified in Parts A, B and C of the First Schedule to the Constitution which is given below:—

The First Schedule to the Constitution

PART A (*Names of States*)	PART B (*Names of States*)	PART C (*Names of States*)	PART D
1. Assam	1. Hyderabad	1. Ajmer	The Andaman & Nicobar Islands.
2. Bihar	2. Jammu & Kashmir	2. Bhopal	
3. Bombay	3. Madhya Bharat	3. Bilaspur	
4. Madhya Pradesh	4. Mysore	4. Cooch-Behar (Since merged in West Bengal)	
5. Madras	5. Patiala and East Punjab States Union	5. Coorg	
6. Orissa	6. Rajasthan	6. Delhi	
7. Punjab	7. Saurashtra	7. Himachal Pradesh	
8. The United Provinces	8. Travancore-Cochin	8. Kutch	
9. West Bengal	9. Vindhya Pradesh (Since made a Chief Commissioner's State)	9. Manipur	
		10. Tripura	

The territory of India will comprise the territories of the States, the territories of the Andaman and Nicobar Islands and such other territories as may be acquired.

It should be noted that the States specified in Part A of the First Schedule correspond to the former Provinces of India and the States specified in Part B of the Schedule comprise six Unions of the former Indian States and three individual States, namely, Mysore, Hyderabad and

Jammu and Kashmir. (Vindhya Pradesh has since been made a Centrally-administered area). These two groups of States will be autonomous States and both their internal constitution and relations with the Union will be practically the same. The States specified in Part B of the Schedule have, however, been placed by the Constitution under the general supervision and control of the Union for a period of ten years from the commencement of the Constitution. Parliament has been authorised to vary this period of Central supervision in respect of any of these States.

As distinguished from these autonomous States, the States in Part C of the Schedule will be Centrally-administered areas. (Cooch-Behar has since been merged in West Bengal). The territories mentioned in Part D of the First Schedule, that is, the Andaman and Nicobar Islands will also be Centrally-administered territories.

Parliament has been empowered to make laws to admit into the Union, or establish, new States on such terms and conditions as it thinks fit. Parliament has also been empowered to make laws to—(*a*) form a new State by separation of territory from any State or by uniting two or more States or parts of States or by uniting any territory to part of any State; (*b*) increase the area of any State; (*c*) diminish the area of any State; (*d*) alter the boundaries of any State; (*e*) alter the name of any State. It has been provided that no Bill for making any of these changes shall be introduced except on the recommendation of the President and unless, where the proposed change affects any State or States specified in Parts A and B of the First Schedule, the views of the Legislature of the State or each of the States concerned with respect to the proposal for introduction of the Bill and also its provisions have been ascertained by the President.

CHAPTER VII

CITIZENSHIP

THE Constitution does not lay down any provisions for the acquisition and termination of Indian citizenship, for which Parliament has been empowered to make laws. The Constitution only defines the groups of persons who will be, or who will be deemed to be, citizens of India at the commencement of the Constitution.

At the commencement of the Constitution, every person having domicile in the territory of India will be a citizen of India if (*a*) he was born in the territory of India; or if (b) either of his parents was born in the territory of India; or if (*c*) he has been ordinarily resident in the territory of India for not less than five years immediately preceding the commencement of the Constitution.

Apart from these classes of persons provision has been made for two other groups of persons:—(1) persons who have migrated to the territory of India from the territory now included in Pakistan and (2) persons of Indian origin residing outside India. The immigrants from Pakistan have been broadly divided into two groups:—(*a*) those who migrated to India before July 19, 1948, and (*b*) those who migrated after July 19, 1948. Every person who migrated to India before July 19, 1948, will be deemed to be a citizen of India at the commencement of the Constitution if he satisfies the two following conditions:—(*i*) he or either of his parents or any of his grand-parents must have been born in undivided India (India as defined in the Government of India Act, 1935, as originally enacted) and (*ii*) he must have been ordinarily resident in the territory of India since the date of his migration. Every person who has migrated to India after July, 19, 1948, will be deemed to be a citizen of India at the commencement of the Constitution if he satisfies the two following conditions:—(*i*) he or either of his

parents or any of his grand-parents must have been born in undivided India (*i.e.* India, as defined in the Government of India Act, as originally enacted) and (*ii*) he must have been registered by an officer appointed by the Government of India in this behalf on an application made by him to such an officer before the commencement of the Constitution. It has been provided that no person shall be so registered unless he has been resident in the territory of India for at least six months immediately preceding the date of his application.

Persons, however, who migrated from the territory of India to the territory now included in Pakistan after March 1, 1947 will not be deemed to be citizens of India. This rule will not apply to persons who, after having so migrated have returned to India under a legal permit for resettlement or permanent return and these persons will be deemed to have migrated to the territory of India after July 19, 1948.

Persons residing outside India will be deemed to be citizens of India if they satisfy the two following conditions: (*i*) They or either of their parents or any of their grand-parents must have been born in undivided India and (*ii*) they must have been registered as citizens of India by the diplomatic or consular representatives of India in the countries where they are for the time being residing on application made to such representatives, whether before or after the commencement of the Constitution, in prescribed form and manner.

No person will be a citizen of India if he has voluntarily acquired the citizenship of any foreign State.

All persons who will be, or will be deemed to be, citizens of India under the provisions mentioned above will, subject to any law that may be made by Parliament, continue to be such citizens.

CHAPTER VIII

FUNDAMENTAL RIGHTS

PART III of the Constitution deals with fundamental rights. It is divided under the following sub-headings: (1) General, (2) Right to Equality, (3) Right to Freedom, (4) Right against Exploitation, (5) Right to Freedom of Religion, (6) Cultural and Educational Rights, (7) Right to Property, and (8) Right to Constitutional Remedies.

The first Article of Part III, Article 12, states that in this Part, unless the context otherwise requires, the term 'the State' includes the Central and the State Governments, the Central and the State Legislatures and all local or other authorities within the territory of India or "under the control of the Government of India".

The words "under the control of the Government of India" may seem unnecessary but actually they are not so. It was explained on behalf of the Drafting Committee that these words were intended to cover cases of territories which might not be included within the territory of India but might be under the control of the Government of India. For instance, if any territory is placed by the U.N. under India's trusteeship, the question might arise whether the constitutional guarantees would be applicable to the inhabitants of such a territory. The inclusion of the words "under the control of the Government of India"—in article 12 is, therefore, intended to ensure that even such people enjoy the fundamental rights guaranteed by the Indian Constitution.

Article 12 lays down that the State shall not make any law which abrogates or abridges the rights conferred by this Part and any law which contravenes this provision shall, to the extent of such contravention, be void. Clause (1) of Article 13 declares that all laws, (which include customs, bye-laws, regulation and the like) which are in force

immediately before the commencement of this Constitution in the territory of India, in so far as they are inconsistent with the provisions of this part, shall, to the extent of such inconsistency be void.

Right to Equality—There are 5 Articles under the heading "Right to Equality." Article 14 says that the State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India. Article 15 says that the state shall not discriminate against any citizen on grounds only of religion, race, cast, sex, place of birth or any of them. Clause (2) of Article 15 says that no citizen shall, on the above grounds, be subjected to any disability or restriction with regard to the access to shops, restaurants, hotels and places of public entertainment or to the use of wells, tanks, bathing ghats, roads and places of public resort maintained wholly or partly out of State funds or dedicated to the use of the general public. It is provided by Clause (3) of this Article that nothing in this article shall prevent the State from making special provision for women and children. Article 16 guarantees equality of opportunity to all citizens in matters of employment or appointment to office under the State. It declares that no citizen shall be discriminated against for employment or office under the State on grounds only of religion, race, caste, sex, place of birth, residence or any of them. Clause (3) of this Article, however, provides that Parliament may by law prescribe for some classes of employment any requirement as to residence within a State. Clause (4) says that nothing in this Article shall prevent the State from providing for the reservation of appointments in favour of any backward class of citizens. Clause (5) provides that the Article does not affect the operation of laws which prescribe that the incumbents of any office connected with a religious

or denominational institution shall belong to a particular religion or denomination.

Article 17 declares the abolition of "Untouchability" and states that the enforcement of any disability arising out of "Untouchability" shall be an offence punishable by law. Article 18 provides that no title excepting those signifying a military or academic distinction shall be conferred by the State. No citizen of India, says clause (2), shall accept any title from any foreign State. Clause (4) goes further. It says that no person holding any office of profit or trust under the State shall, without the President's consent, accept any present, emolument, title or office of any kind from any foreign State. By clause (3), no person who is not a citizen of India shall, while he holds any office of profit or trust under the State, accept without the consent of the President any title from any foreign State.

Right to Freedom—Article 19 states that all citizens shall have the right (*a*) to freedom of speech and expression; (*b*) to assemble peaceably and without arms; (*c*) to form associations or unions; (*d*) to move freely throughout the territory of India; (*e*) to reside and settle in any part of the territory of India; (*f*) to acquire, hold and dispose of property; and (g) to practise any profession or to carry on any occupation, trade or business.

These rights are, however, not absolute. Clauses (2), (3), (4), (5) and (6) of this Article make it clear that nothing in the Article shall prevent the State from imposing any reasonable restriction on these rights in the interests of public order or morality or for the protection of the interests of any Scheduled Tribe. Nor anything in the Article, it is laid down, shall prevent the State from prescribing, or authorising the prescription of, the professional or technical qualifications necessary for the practising of any profession or carrying on any occupation, trade or business.

Article 20 lays down that "no person shall be convicted of any offence except for violation of a law in force at the time of the commission of the act charged as an offence." Also, no person shall be given punishment greater than what might have been inflicted under the law in force at the time of the commission of the offence. Clause (2) says that "no person can be prosecuted and punished for the same offence more than once." The words "prosecuted and punished" should be clearly noted. Originally in the Draft Constitution there was only the word "punished" in the clause and not "prosecuted and punished". The framers of the Constitution, however, felt that if there was only the word "punished", some offenders against whom departmental action had been taken might plead that they had been already punished and no further punishment could be inflicted on them. To avoid this difficulty, the word was replaced by "prosecuted and punished." Clause (3) of the Article lays down that "no person accused of any offence shall be compelled to be a witness against himself."

Article 21 is as follows: "No person shall be deprived of his life or personal liberty except according to procedure established by law." Article 22 begins thus:

"(1) No person who is arrested shall be detained in custody without being informed, as soon as may be, of the the grounds for such arrest, nor shall he be denied the right to consult a legal practitioner of his choice.

"(2) Every person who is arrested and detained in custody shall be produced before the nearest magistrate within a period of twenty-four hours of such arrest excluding the time necessary for the journey from the place of arrest to the court of the magistrate and no such person shall be detained in custody beyond the said period without the authority of a magistrate."

These provisions relating to personal liberty will not apply to (1) enemy aliens and (2) persons arrested and detained under any law providing for preventive detention.

Article 22 also lays down a number of provisions regarding preventive detention. It is laid down that no law providing for preventive detention shall authorise the detention of a person for longer than three months unless an Advisory Board consisting of persons who are, or have been, or are qualified to be appointed as Judges of a High Court has reported before the expiration of the said period that there is sufficient cause for such detention. This rule will have exceptions. Parliament may prescribe by law the circumstances under which a person may be detained for a period longer than three months under a law providing for preventive detention without obtaining the opinion of an Advisory Board.

Parliament can also prescribe by law the maximum period for which any person may in any class or classes of cases be detained under any law providing for preventive detention. No person can be detained under a law of preventive detention beyond the maximum period so prescribed by Parliament. It must be understood that if Parliament fixes the maximum period of preventive detention at over three months for any class of persons, then such persons can be detained longer than three months without obtaining the opinion of an Advisory Board.

Every person detained under a law of preventive detention must be communicated as early as possible the grounds for the order of preventive detention and must be given the earliest oportunity of making a representation against the order. The authorities, however, will not be bound to disclose facts which they may consider to be against public interest to disclose.

Critics have cynically commented that these provisions regarding preventive detention guarantee the fundamental right of every Indian citizen to be detained without trial for a period of three months.

Articles 21 and 22 are among the most important, as well as controversial Articles in the Constitution (See "Comments and Criticism" below).

Right against Exploitation—Article 23 prohibits traffic in human beings, *begar* and other forms of forced labour. Clause (2) says that the Article does not affect the right of the State to impose compulsory service for public purposes. There cannot be, however, any discrimination in the imposition of such service on grounds only of religion, race caste or class.

Article 24 says that "no child below the age of fourteen years shall be employed to work in any factory or mine or engaged in any other hazardous employment."

COMMENTS AND CRITICISM

Rule of Law in India—Articles 14, 19, 21 and 31 (see below), taken together may be said to establish the Rule of Law in India. The Rule of Law as it is understood in Great Britain and the United States means two things: (1) no person can be deprived of life, liberty or property except for a breach of law proved in the ordinary courts, and (2) no person (except the King) is above law, that is, all persons, regardless of their status and position, are equally liable to penalty for contravention of law.

It will be noticed that Article 21 mentions only "life and personal liberty" and does not mention property. It says: "No person shall be deprived of his life or personal liberty except according to procedure established by law". It is clear, however, from Article 19 and Article 31 that

no person can be deprived of property also except according to law.

A storm of controversy was raised in the Constituent Assembly on the words "except according to procedure established by law." A large number of speakers including a member of the Drafting Committee held that these words seriously limited the jurisdiction of the courts and gave unlimited power to the legislature to take away or restrict individual liberty. It was rightly pointed out by these critics that, if these words were allowed to stand, the courts would have only the authority to examine whether a particular person who was arrested or kept in custody was being done so according to procedure established by law. They will have no authority to examine the merits of the substantive law. In other words, the courts will have no authority to go into the question whether the law itself is capricious, unjust or iniquitous. The courts will thus be mere spectators once the Legislature lays down a law. They will be allowed only to see whether the law has been adhered to in a particular case and will not allowed to judge whether the law itself is just or unjust. The critics, therefore, said that the words "except according to procedure established by law" should be substituted by the words "without due process of law".

It may be pointed out that the Advisory Committee on Fundamental Rights which was set up by the Constituent Assembly had suggested for the Article the following wording, "no person shall be deprived of life and liberty without due process of law." The Drafting Committee, however, changed these words and substituted in their place "except according to procedure established by law". The Committee explained that these words namely, "except according to procedure established by law" were more specific than the words "without due process of law." They

said that the former words occurred in Article 31 of the Japanese Constitution.

Now the words "without due process of law" have been taken from the American Constitution. The fifth amendment to the American Constitution, which was adopted in 1791, lays down that no person shall "be deprived of life, liberty or property, without due process of law." The Supreme Court of the United States has interpreted the words "without due process of law" to mean that the courts can not only examine the procedure, they can also examine the jurisdiction of the legislature as well as the substantive law itself. They can declare a law invalid on the ground that it makes an undue invasion of the personal liberty of citizens.

It is clear that Article 21 does not give any such right to the Indian courts. The wording of the Article clearly indicates that in matters relating to personal liberty, the courts in India will have no power to examine the substantive law. For example, if the legislature makes a law providing that a certain class of cases would not be triable in courts, it will not be open to the courts to challenge the law on the ground that it aims at undue infringement of personal liberty of citizens. Even if the courts feel that a certain law modifies criminal procedure in a manner which is likely to lead to denial of justice in a certain class of cases, they will not have the authority to declare that law void. Thus Article 21 establishes the supremacy of the Legislature over the Judiciary in certain respects. The Rule of Law in the American sense is not going to be established in India by the new Constitution as the laws relating to personal liberty will not be open to judicial review.

It must not be understood, however, that the Indian courts have not given any power to declare any law made by the Legislature to be unconstitutional. In fact, wide powers

have been given to the Judiciary in India to declare laws enacted by Legislatures to be void on the ground of their being unconstitutional. The new Constitution in India, it must be remembered, is federal in character. Supremacy of the Judiciary is one of the fundamental features of a federal constitution. The Supreme Court will have the authority to declare a law made by a State as unconstitutional and void if it encroaches into the sphere of the centre and *vice versa*. Moreover, if any law violates any of the written provisions of the Constitution, the Judiciary will have the authority to declare it void. For example, if any law puts unreasonable restrictions on the freedom of speech or expression or on the freedom of movement of persons, the Judiciary can declare it unconstitutional.

The defect of Article 21 has, however, been made up to some extent by Article 22 which provides that every person who is arrested shall have the right to consult a legal practitioner of his choice and must be produced before the nearest magistrate within a period of twenty-four hours of such arrest excluding the time necessary for the journey from the place of arrest to the court of the magistrate. Of course, these provisions do not apply to cases of arrest under laws providing for detention without trial. But as regards other cases, it is obvious, no law can take away the above rights of the arrested persons. If any law seeks to do so, it shall be void. As regards these rights, it will be seen that similar provisions also exist in the Criminal Procedure Code (1898). But it should be clear that whereas Parliament can easily amend the Criminal Procedure Code and thereby change these provisions, it canot amend the Constitution so easily. The incorporation of these provisions in the Constitution has, therefore, been a greater safeguard of liberty than if they existed only in the Criminal Procedure Code.

Rights to Freedom of Religion—The four Articles 25, 26, 27 and 28 guarantee religious rights. Article 25 declares that "subject to public, order, morality and other provisions of this Part, all persons are equally entitled to freedom of conscience and the right freely to profess, practise or propagate religion." An explanation provides that the wearing and carrying of Kirpans shall be deemed to be included in the profession of Sikh religion. It is made clear in clause (2) of this Article that the Article will not affect the right of the State to regulate the political, economic and other secular activities which may be associated with religious practice or to effect social welfare and reform or to throw open Hindu religious institutions of a public character to all sections of Hindus.

Article 26 guarantees the right of religious denominations to establish and maintain institutions for charitable or religious purposes, to manage its own affairs, to own, acquire and administer movable and immovable property in accordance with law.

Article 27 states that funds specifically appropriated for the promotion or maintenance of any particular religion or religious denomination will be non-taxable.

According to Article 28, no religious instruction can be provided in any educational institution wholly maintained out of State funds. This will not apply to institutions established under any religious endowment requiring the imparting of religious instruction. Clause (2) of the Article says that in the State-recognised or the State-aided institutions attendance at religious instructions will be optional. If the student is a minor, his guardian's consent will be necessary for requiring such attendance.

These Articles, it is evident, truly constitute a charter of religious freedom for the people of India. They guarantee full freedom of conscience and of worship while

safeguarding against the possible abuses of religion, particularly, against the practice, frequently resorted to by some people, of using religion as a cloak to advance their personal interests at the cost of others.

Cultural and Educational Rights–The Constitution, while recognising the unity of the Indian people and seeking to strengthen it, also recognises their diversity and the need for giving full scope to every section of the population to grow according to its own genius. The Constitution thus aims not at dead uniformity but at rich harmony. The two Articles 29 and 30 guarantee cultural and educational rights. Article 29 lays down that every section of citizens having a distinct language, script or culture shall have the right to conserve the same. Clause (2) of the Article states that none will be denied admission to State-maintained or State-aided educational institutions on the ground only of religion, race, caste, language or any of them. Article 30 guarantees to all minorities the right to establish and administer educational institutions of their own choice. It is provided that in granting aids to educational institutions the State shall not discriminate against any institution on the ground that it is under the management of a minority.

Right to Property—Article 31 deals with right to property. The first three clauses of the Article run as follows:—

"(1) No person shall be deprived of property save by authority of law.

"(2) No property, movable or immovable, including any interest in, or in any company owning, any commercial or industrial undertaking, shall be taken possession of or acquired for public purposes under any law authorising the taking of such possession or such acquisition, unless the law provides for compensation for the property taken possession of or

acquired and either fixes the amount of the compensation or specifies the principles on which, and the manner in which, the compensation is to be determined and given.

"(3) No such law as is referred to in clause (2) made by the Legislature of a State shall have effect unless such law, having been reserved for the consideration of the President, has received his assent."

The wording of clause (2) makes it clear that matters relating to compensation for property taken possession of or acquired by the State will be non-justiciable. To be more precise, the courts will have no power to go into the question whether such compensation in any particular case or cases is just or unjust, adequate or inadequate. The Legislature will fix the compensation or lay down principles for determining the same and there the matter will end; the courts will have no jurisdiction in such matters.

The requirement relating to compensation will not apply to (1) laws providing for the imposition or levying of any tax or penalty; (2) laws made for the promotion of public health or the prevention of danger to life or property; (3) laws relating to evacuee property and (4) existing laws other than those passed not more than eighteen months before the commencement of the Constitution. For laws enacted not more than eighteen months before the commencement of the Constitution, it is provided that such laws may be submitted to the President for certification within 3 months from such commencement; and if so certified by him, these laws shall not be called in question in any court on the ground that they contravene the provisions of clause (2). Further, if any Bill pending at the commencement of the Constitution in the Legislature of a State has been passed by the Legislature and having been reserved for

the President's assent, has received the assent, the law so assented, it is provided, shall not be called in question on the ground that it contravenes clause (2) of this Article. These latter provisions have, obviously, in view the Zemindari Abolition Acts and Bills of the Provinces.

Right to Constitutional Remedies—Article 32 guarantees the right to move the Supreme Court for the enforcement of the Fundamental Rights. The Supreme Court, under clause (2), is given the power to issue directions or orders or writs, such as, *habeas corpus, mandamus,* prohibition, *quo warranto* and *certiorari* for the enforcement of the fundamental rights. Parliament may empower any other court to issue these writs and directions within its jurisdiction. Article 33 gives the authority to Parliament to restrict or abrogate these rights in their application to the members of the Armed Forces in order to ensure the maintenance of proper discipline among them. Article 34 empowers Parliament to validate acts done or sentences passed in any area where martial law was in force. Article 35 makes it clear that it is Parliament and no other legislature that will have the authority to prescribe punishment for acts which are declared to be offences under this Part of the Constitution. All existing laws relating to these matters shall, however, continue in force till they are altered or repealed by Parliament.

COMMENTS

The Writ of Habeas Corpus in India—*Habeas corpus* literally means to "have the body". The writ of *habeas corpus,* as it is known in England, is an order issued by the High Court in England calling upon a person who has detained another to produce the body of the latter before the Court. By this order, the Court can have any detained persons produced before it in order to examine whether that person is being

lawfully detained or not and thereafter deal with him as required by law. The writ of *habeas corpus* is thus a great safeguard of the liberty of the citizens under the British Constitution. Any person who is being illegally detained can have his liberty restored by the Court through its power to issue the writ, and the wrong-doer can be properly punished by the Court for his illegal act. The writ of *habeas corpus* is thus a bulwark of Rule of Law under the British Constitution. Maintenance of Rule of Law in England has been possible largely because of the Court's power to issue this writ. The writ of *habeas corpus* is of great antiquity. It is called a prerogative writ because it is based on the King's prerogative to inquire into the cause of detention of any of his subjects.

In India formerly only the High Courts of Calcutta, Madras and Bombay had power to issue the writ of *habeas corpus*. Later (1927) the High Court of Calcutta held that for purposes mentioned in S. 491 of the Criminal Procedure Code the Legislature had taken away the power of the High Court to issue the old prerogative writ of *habeas corpus*. Though the High Courts of Bombay and Madras held a different view about the matter, in 1939 the Privy Council approved of the view taken by the Calcutta High Court. The Privy Council agreed with the Calcutta High Court that the Legislature had taken away the power of the High Court "to issue the prerogative writ of the *habeas corpus* in matters contemplated by S. 491 of the Code of Criminal Procedure of 1898." The relief for the purposes mentioned in S. 491, therefore, could only be obtained by application under that section.

Under the new Constitution, however, the Supreme Court, all the High Courts and such other Courts as may be authorised by Parliament, will have power to issue the writ of *habeas corpus*. The power of issuing this writ

will, therefore, be derived under the new Constitution from clear Constitutional provisions and not from historical precedents or usage as under the British Constitution. And, unlike in England, the Courts here will have the authority to go into the question whether the law itself is Constitutional or otherwise. In England no Court can declare an Act of Parliament as unconstitutional though it may hold the rules made by the administrative authorities under any law as *ultra vires* of that law.

CHAPTER IX

DIRECTIVE PRINCIPLES OF STATE POLICY

A novel feature of the Constitution is the Articles dealing with "Directive Principles of State Policy." These are included in Part IV of the Constitution. Atricle 37 makes it clear that the provisions of this Part shall not be enforceable in any Court but that nevertheless they are "fundamental in the governance of the country and it shall be the duty of the State to apply these principles in making laws." Article 38 declares that the State shall strive to establish a social order on the basis of justice, social, economic and political. Almost all the other Articles of this Part are like an amplification of this Article. Articles 39, 41, 42, 43, 46, 47 and 48 relate chiefly to economic matters. They lay down that the State shall strive to ensure adequate means of livelihood to all citizens; to ensure equitable distribution of the ownership and control of the material resources of the community; to prevent harmful concentrations of wealth; to secure that there is equal pay for equal work for both men and women; to prevent injury to the health and strength of men, women and children through their being forced to enter vocations unsuitable to their age; to protect childhood and youth against exploitation and against moral and

material abandonment; to make, as far as possible, provisions for education, work and public assistance in case of unemployment, old age, sickness, disablement and other cases of undeserved want; to ensure just and humane conditions of work and for maternity relief; to ensure a decent standard of living to all workers and to promote cottage industries; to protect the interests, educational and economic, of weaker sections of people, particularly the Scheduled Castes and the Scheduled Tribes; to raise the level of nutrition and standard of living, to promote public health and to prohibit the consumption of intoxicating drinks or drugs except for medicinal purposes; to promote agriculture and animal husbandry on modern and scientific lines, to preserve and improve breeds of cattle and prohibit the slaughter of cows and other useful cattle specially milch and draught cattle and their young stock.

Article 40 says that the State shall organise village panchayats and endow them with such powers as may enable them to function as units of self-government. Article 44 declares that the State shall strive to secure for its citizens a uniform civil code throughout the country. Article 45 directs that within a period of ten years from the commencement of the Constitution, the State shall endeavour to provide free and compulsory education for all children up to the age of fourteen years. Article 49 makes it an obligation of the State to protect monuments, places or objects of artistic or historic interest declared by Parliament to be of national importance. Article 50 directs that the State shall take steps to separate the Judiciary from the Executive in the public services.

Article 51 relates to international peace and security. It lays down that the State shall endeavour to promote international peace and security, "to maintain just and

honourable relations between nations"; "to foster respect for international law and treaty obligations in the dealings of organised peoples with one another"; and "encourage settlement of international disputes by arbitration.

COMMENTS AND CRITICISM

This Part of the Constitution has been criticised on the ground that it embodies only a number of pious wishes. It is pointed out that as the provisions of this Part are not enforceable in Courts, their inclusion in the Constitution has been meaningless. As against this criticism it may be said that these principles embody some high ideals and their inclusion in the Constitution will act as a standing reminder to the State that it must continually strive to formulate and implement its policies in such a manner as to approximate to these ideals. They are, it has been well said, like an instrument of instructions to the State issued by the people. In a democratic system of Government, the swing of public opinion puts different parties in power at different times. In India, therefore, different parties may come to the helm of affairs according to the change of popular opinion. At one time the party in power may be one with conservative leanings, at another time the Government may be controlled by a party with a radical outlook. But the 'Directive Principles' in the Constitution will ensure that a conservative party will not be able to ignore these principles altogether in the formulation of its policy, and also that a radical party will not feel it necessary to abrogate or scrap this Constitution in order to be able to carry out the party's economic or other programmes.

It is also not a fact that provisions similar to the "Directive Principles" exist in no other Constitution of the world. Some such principles are found in the Constitution of the Irish Free State.

CHAPTER X

THE PRESIDENT AND THE VICE-PRESIDENT

THE Constitution lays down that there shall be a President of India. The President will be elected by the members of an electoral college consisting of— (*a*) the elected members of both Houses of Parliament and (*b*) the elected members of the Legislative Assemblies of the States. The election of the President will be in accordance with the system of proportional representation by means of the single transferable vote and the voting at such election will be by secret ballot. (To be eligible for election as President, a person (1) must be a citizen of India, (2) must have completed the age of thirty-five years (3) must be qualified for election as a member of the House of the People, and (4) must not hold any office of profit under the Government of India or any State Government or any local authority subject to the control of any of these Governments. For the purpose of this provision, however, a person will not be deemed to hold any office of profit by reason only that he is the President or the Vice-President of the Union or the Governor or the Rajpramukh or Uparajpramukh of any State or is a Minister either for the Union or for any State.) It is provided that a person who holds or who has held office as President shall be eligible for re-election to that office.) (The President will receive a salary of Rs. 10,000 per month and other allowances. He will be entitled to a rent-free official residence.)

(The term of office of the President will be five years. The President must not hold any other office of profit. He must not be a member of either House of Parliament or a House of any State Legislature. If any member of any of these bodies is elected President, his seat will be deemed to have been vacated from the date on which he enters upon

his office as President. The President may resign his office by writing under his hand addressed to the Vice-President. He may be impeached for violation of the Constitution and removed from office. When a President is to be impeached for violation of the Constitution, the charge is to be preferred by either House of Parliament and the other House will investigate the charge or cause it to be investigated. If the House which investigates the charge or causes it to be investigated passes by a two-thirds majority of its total membership a resolution that the charge preferred against the President has been sustained, it will have the effect of removing the President from his office as from the date on which the resolution is so passed.

The President's Powers—The executive power of the Union will be vested in the President and will be exercised by him either directly or through officers subordinate to him in accordance with the Constitution. The Constitution, however, says that "there shall be a Council of Ministers with the Prime Minister at the head to aid and advise the President in the exercise of his functions." Thus, the President is required by the Constitution to exercise his functions with the advice of his Council of Ministers. But the important question is whether the President will always be bound to accept the advice of the Council of Ministers, that is, whether he will be a mere nominal executive head, a figurehead, or will enjoy some real power.

It is clear, in the first place, that the Constitution does not say that the President will always be bound to accept the advice of his Ministers. And it cannot be argued that the conventions of the British Constitution, according to which the King acts as a mere constitutional head and exercises his functions according to the advice of the Cabinet, will apply in India. So the President is not required either by the letter of the Constitution or by any

established convention in the country to act as a mere constitutional head. The conclusion is, therefore, inescapable that the President of India will not be a mere figure-head but will enjoy some real power. But what will be the the extent and limitations of this power?

It is obvious that the President will not be able to interfere in the normal day-to-day administration of the country but will have to act according to the advice of his Ministry so far as ordinary affairs are concerned. For the Ministry, under the Constitution, will have to be collectively responsible to the Lower House of Parliament, the House of the People. So the Ministry will be such as will enjoy the confidence of the Lower House of the Legislature. If the President refuses to accept the advice of the Ministry in the day-to-day affairs, the Ministry may feel compelled to resign and thereby confront the President with the necessity of finding an alternative Ministry which the President may not be able to do. For the new Ministry must also be such as will enjoy the confidence of the Lower House. But a President who flouts the counsel of the Ministry in the ordinary administrative affairs, is bound to incur the wrath of the Lower House of Parliament, too, which will make it impossible for him to find an alternative Ministry enjoying the confidence of that body.

But in extraordinary situations, it is evident, the President may choose to act in his discretion without accepting the Ministerial advice. The President, like the Ministers, will also be an elected representative of the people and may in grave and difficult situations, feel called upon to act according to his own judgment by disregarding the advice of his Ministry. He may regard the exercise of his discretion in a given situation as the best way of being true to the great trust placed upon him by the nation and of carrying out the pledge he took at the time of entering

upon his office, namely, "to preserve, protect and defend the Constitution and the law" and to devote himself "to the service and well-being of the people of India."

To take a concrete instance, the President, it is clear, may refuse to accept the advice of the Ministry for the dissolution of the House of the People. He may hold that such dissolution, though it might be advantageous to the Ministry, will not be to the best interests of the nation. The power of dissolution, it may be noted, is regarded in many countries as a prerogative of the head of the State who, in a democratic form of Government, is expected to hold the balance between the Ministry and the Legislature. In South Africa, for example, though the King has to act on the advice of the Ministers, he or his representative, the Governor-General, has discretionary powers in respect of certain matters including the dissolution of the Legislature. Also, in the Irish Constitution, though the President is generally required to exercise his powers on the advice of the Ministers, he has discretionary power to refuse to dissolve the Dail Eireann on the advice of the Ministers.

Parliament's power of impeaching the President for the violation of the Constitution will, however, act as an effective check against the dictatorial use of the Presidential powers. Against the decision of Parliament in case of an impeachment, the President, it should be noted, will have no right of appeal to any other body. And the intention of the Constitution, taken as a whole, is clear. The Constitution seeks to establish a Republic in India in which Governmental power is to be exercised according to the will of the people. And there is no doubt that the Ministry at the Centre which will enjoy the confidence of the Lower House of Parliament is ordinarily to be regarded as the representatives of the popular will in the Union. A President who cares for both the spirit and the letter of the

Constitution will not, therefore, in normal circumstances dare to disregard the advice of the Ministry.

The President, however, if he happens to be man of personality, will wield enormous power. Being himself an elected representative of the people, he will enjoy great prestige and by the power of his personality he will be able greatly to influence the decisions of the Ministry. One has only to remember the enormous powers vested in the Centre by the Constitution to see what the ability of the President to influence Ministerial decisions means. Moreover, the President will appoint his Prime Minister. And if, instead of two, a number of parties are represented in Parliament, none of which possesses an absolute majority, the President will have great freedom of choice in apointing the Prime Minister. By choosing the leader of one group instead of another, he will be greatly able to determine the composition of the Government and, therefore, its colour.

Bearing in mind this general estimate of the Presidential powers, let us see the specific powers that have been given to the President. The President's powers may for the sake of convenience be divided under the following heads:—(*a*) Executive powers; (*b*) Emergency powers; (*c*) Legislative Powers; (*d*) Financial Powers; (*e*) Judicial Powers.

Executive Powers —As has been mentioned, the President will be the executive head of the Union Government. The supreme command of the Defence Force of the Union will be vested in the President. He will thus have the power of declaring war and concluding peace. The Executive power of the Union will extend (*a*) to the matters with respect to which Parliament has power to make laws and (*b*) to the exercise of such right, authority and jurisdiction as are exercisable by the Government of India by virtue of any treaty or agreement. The President will make rules for the more convenient transaction of the business of the Government

of India, and for the allocation among Ministers of the said business. All executive action of the Government of India will be expressed to be taken in the name of the President.

Emergency Powers—The President has been given very wide powers to meet emergencies. The Constitution envisages three kinds of emergencies and arms the President with sufficient powers to deal with them. The three kinds of emergencies are the following:—(*a*) Emergencies arising out of war or aggression or threat of the same; (*b*) emergencies arising out of the failure of the Constitutional machinery in the States; (*c*) financial emergencies.

(A) Let us first deal with provisions relating to the first kind of emergency. If the President is satisfied that the security of India or any part thereof is threatened by war or external aggression or internal disturbance, he may by proclamation make a declaration to that effect. It has been provided that a Proclamation of Emergency (as it will be called) can be made even before the actual occurrence of war or aggression or disturbance if the President is satisfied that there is imminent danger thereof. A Proclamation of Emergency may be revoked by a subsequent Proclamation. It must be laid before each House of Parliament and will cease to operate at the expiration of two months unless before the expiration of that period it has been approved by both Houses of Parliament.

It is quite possible, however, that a Proclamation of Emergency may be issued at a time when the House of the People has been dissolved or its dissolution may take place during the period of two months following the issuing of the Proclamation. In such cases, if a resolution approving the Proclamation has been passed by the Council of States, but no resolution with respect to such Proclamation has been passed by the House of the People before the expiration of that period (of two months), the Proclamation will

cease to operate at the expiration of thirty days from the date from which the House of the People first sits after its reconstitution unless before the expiration of the said period of thirty days a resolution approving the Proclamation has also been passed by the House of the People.

The Proclamation of Emergency will have the effect of practically turning the federal constitution into a unitary one. For while a Proclamation of Emergency is in operation— (1) Parliament will have unrestricted power to make laws for the whole or any part of India with respect to any of the matters enumerated in the State List; and any State law which is inconsistent with such laws made by Parliament will be void to the extent of the inconsistency; (2) the executive power of the Union will extend to the giving of directions to any State in any matter as to the manner in which the executive power thereof is to be exercised; (3) the following fundamental rights guaranteed by the Constitution will remain suspended—(*a*) freedom of speech and expression; (*b*) freedom to assemble peaceably; (*c*) freedom to form associations; (*d*) freedom to reside and settle in any part of the territory of India; (*f*) freedom to acquire, hold and dispose of property and (*g*) to practise any profession, or to carry on any occupation, trade or business; (4) the President will have power to suspend the right to move the courts for the enforcement of any of the fundamental rights and (5) the President will have the power to suspend the application of provisions relating to the distribution of revenues between the Centre and the States.

It is undeniable that the powers vested in the President, or rather the Central executive to meet emergencies arising out of war or aggression or disturbances are really very drastic. It may be hoped that the President will use these powers on the advice of the Ministry. But none can guarantee that in some circumstances the President will not

exercise any of these powers in his discretion and independently of the advice of the Ministry. And when it is remembered that a Proclamation of Emergency can be issued even before the actual occurrence of war or aggression, the extent of powers conferred on the President seems to be almost incompatible with democracy. Indeed, it is difficult to refute the criticism that the powers given to the executive to meet emergencies arising out of war or aggression or disturbances are totalitarian in character.'

On the other hand, it is indisputable that the security of the State as a whole is of far greater importance than the individual liberty of a few citizens. It is the State that protects the liberty of citizens and if the State itself is destroyed, the liberty of all citizens would be annihilated. Nor should it be forgotten that the threats to the security of states is at present greater than in any other period of history. The Constitution of India has been drawn up at a time when, after the devastation of two successive global wars, the world has been darkened by the shadow of a third armageddon. It is natural, therefore, that the framers of the Constitution have put greater emphasis on the need for the maintenance of the integrity and security of the state in grave national emergencies than on guaranteeing individual liberty in such situations. It is quite conceivable that in times of crisis a few anti-social elements, if they are allowed to have the same liberty they enjoy in normal times, may, by taking advantage of that liberty, destroy the State and annihilate the liberty of all other citizens.

The power of suspending fundamental rights is, also, not unknown in other constitutions. Both the British Parliament and the American Congress can suspend the writ of *habeas corpus*. The British executive, however, has no right to suspend it, while the American President has only an ad interim power of suspending the writ of *habeas corpus*

in certain circumstances. The executive in India has been empowered to suspend some of the most important fundamental rights, for the issuing of a Proclamation of Emergency will have the automatic effect of suspending these fundamental rights. But it is provided that the orders that may be made by the President to suspend the right of moving the courts for the enforcement of the fundamental rights must be laid before each House of Parliament. This means that Parliament will have the right to revoke these orders.

It is clear, however, that the powers conferred on the central executive to meet national emergencies are, so to say, a loaded gun which can be used both to protect and to destroy the liberty of citizens. The gun must be used, therefore, with extreme caution. Article 48 of the Weimer Republic of Germany empowered the President of the German Reich to abrogate some fundamental rights in times of serious disturbance or other crises. And it is by abusing the powers granted by this Article that Hitler destroyed the liberty of the German people. The need for caution in the exercise of emergency powers cannot, therefore, be over-emphasised. When Article 359, which deals with the suspension, during the operation of a Proclamation of Emergency, of the right of moving courts for the enforcement of the fundamental rights, was being passed in the Constituent Assembly, a certain member stood up and declared: "This is a day of shame and sorrow. May God help the Indian people." How far this declaration was prophetic will be shown by Futurity alone.

(B) Article 356 states that if the President, on receipt of a report from the Governor or Rajpramukh of a State or otherwise, is satisfied that a situation has arisen in which the government of a State cannot be carried on in accordance with the provisions of this Constitution, the President may by Proclamation (*a*) assume to himself all or any of

the functions of the Government of the State and all or any of the powers vested in or exercisable by the Governor or Rajpramukh or any body or authority in the State other than the State Legislature and the High Court; and (*b*) declare that the powers of the State Legislature shall be exercisable by or under the authority of Parliament. Any such Proclamation may be revoked or varied by a subsequent Proclamation. Such a Proclamation will cease to operate at the expiration of two months unless before the expiration of that period it has been approved by resolutions of both Houses of Parliament. A Proclamation so approved will, unless revoked, cease to operate on the expiration of a period of six months from the date of passing of the second of the resolutions approving the Proclamation. By similar subsequent approvals the life of the Proclamation may be extended by periods of six months each but in no case will the Proclamation remain in force for more than three years.

It may so happen, however, that a Proclamation is issued at a time when House of the People is dissolved or the dissolution of the House takes place during the period of two months following the issuing of the Proclamation. In such cases if a resolution approving the Proclamation has been passed by the Council of States but no resolution with respect to such Proclamation has been passed by the House of the People before the expiration of that period (of two months), the Proclamation will cease to operate at the expiration of thirty days from the date on which the House of the People first sits after its reconstitution unless before the expiration of the said period of thirty days a resolution approving the Proclamation has been also passed by the House of the People. A similar provision has been made for the case where the dissolution of the House takes place within a period of six months after an approval of the Proclamation by the two Houses of Parliament.

It is important to note that to issue a Proclamation regarding the failure of the constitutional machinery in any State, the President need not wait for the report of the Governor or the Rajpramukh, but may take action on his own initiative. Further, Article 365 states that any failure on the part of a state to comply with any directions given in the lawful exercise of the executive power of the Union may be regarded by the President as failure of the constitutional machinery in the State. This means that any such failure to comply with the Union's directions on the part of any State may be followed by the issuing of a Proclamation and the assumption by the President of the powers of the State Government. The President's power of supersession of the State Government will, therefore, be very drastic.

It will be seen that unlike the Act of 1935, which vested in the Governor the power of law-making for the Provinces under similar circumstances, the new constitution vests such power in the Central Legislature. The difference is not insignificant. For under the new Constitution, in cases of constitutional failure, the executive will not have the power to assume automatically the functions of the Legislature of the State; such power will be vested in the Central Legislature where, it should not be forgotten, the State in question will be represented by its own representatives. The idea is that in the case of constitutional failure in a State the power of making laws for it should be exercised in accordance with the desire of the representatives of the whole country and not those of that particular State alone. It has been provided by Article 357 that when the powers of any State Legislature are made exercisable by Parliament by Proclamation under Article 356—that is, Proclamation of constitutional failure—Parliament shall have the competence to delegate to the President or any other authority the power of law-making for the State. Thus the

executive will be able to make laws for the State only if Parliament authorises it to do so.

The wide powers given to the central executive by Articles 356 and 357 should be used sparingly. A too frequent exercise of these powers will destroy the autonomy of the units. The framers of the Constitution contemplated that before the President took over the administration of any State he would issue a warning. If this warning fails to have any effect, the next step would be the ordering of a general election. If even the election of the new legislators fails to mend matters, then alone the President would take over the administration of the State. It may be hoped that this intention of the framers of the Constitution would be respected in the actual working of the Constitution.

(C) If the President is satisfied that a situation has arisen whereby the financial stability or credit of India is threatened, he may by a Proclamation make a declaration to that effect. Such a Proclamation may be revoked by a subsequent Proclamation. It will cease to operate at the expiration of two months unless before the expiration of that period, it has been approved by resolutions of both Houses of Parliament. If such a Proclamation is issued at a time when the House of the People has been dissolved or if the dissolution of the House takes place within the period of two months mentioned above, the procedure will be the same as in the case of a Proclamation of Emergency [See (A) above].

While a Proclamation of this kind is in operation the executive authority of the Union will extend to the giving of directions to any state to observe such canons of financial propriety as may be specified in the directions, and of giving such other directions as the President may deem necessary. These directions may include (*a*) a provision requiring the reduction of salaries and allowances of any class of persons

serving in connection with the affairs of a State, (*b*) a provision requiring that Money Bills or all other financial Bills must be reserved for the consideration of the President after they are passed by the State Legislature.

Also, while such a Proclamation of financial emergency is in operation, the President will have power to issue directions for the reduction of salaries and allowances of all or any class of persons serving in connection with the affairs of the Union including the Judges of the Supreme Court and the High Courts.

Legislative Powers—All Bills, when passed by both Houses of Parliament must be presented for the assent of the President. The President can withold his assent from all Bills other than Money Bills. But if the Bill is passed again by the Houses with or without amendment, the President must not withold his assent therefrom. All Money Bills and other financial Bills will require the previous recommendation of the President before their introduction into Parliament.

At any time, except when both Houses of Parliament are in session, the President will have the power of issuing Ordinances, which will have the same effect as Acts of Parliament. Every such Ordinance must be laid before both Houses of Parliament and will cease to operate at the expiration of six weeks from the re-assembly of Parliament or, if before the expiration of that period resolutions disapproving it are passed by both Houses, upon the passing of the second of those resolutions.

(The President will have some legislative powers in relation to the State laws for which see the chapter on Legislatures of States specified in Part A of the First Schedule).

Financial Powers—The President has been authorised to lay before Parliament at the beginning of every financial

year, a financial statement showing the estimated receipts and expenditure of the Union for that year. No demand for grant can be made except on the recommendation of the President.

The President has been given power to distribute between the Union and the States shares from the Income tax, and to assign to Assam, Bihar, Orissa and West Bengal grants-in-aid in lieu of their shares from jute export duty. The President is also empowered to set up a Finance Commission. (For all these matters see chapter on Financial provisions).

Judicial Powers—The President will have the power to grant pardons reprieves or remissions of punishment or to suspend, remit or commute the sentence of any person convicted of any offence—(*a*) in all cases where the punishment or sentence is by a Court Martial; (*b*) in all cases where the punishment or sentence is for an offence against any law relating to a matter to which the executive power of the Union extends; (*c*) in all cases where the sentence is a sentence of death.

The American President and the President of India—The President of America is indirectly elected by an electoral college. The President of India will also be elected in a similar way. But whereas in the case of America a special electoral college is formed for Presidential election, here the elected members of both Houses of Parliament and of the Legislative Assemblies of the States will form the electoral college for the purpose. It is interesting to note that the American Constitution expressly debars the members of Congress, the senators and representatives, from being Presidential electors. The American Constitution provides for the impeachment of the President, the Indian Constitution also contains a similar provision. But whereas in America it is the Upper House, the Senate, which

has the sole power of trying impeachments, in India either House of Parliament will have such power provided the other House prefers the charge. The Constitution of India provides that a person who has held office as the President will be eligible for re-election to that office. The American Constitution also does not put any limitation on re-election of a former President. In America, however, a convention had grown up—mainly because the first President, Washington, had declined a third term—that no President was to stand for more than two terms. The convention had been long respected till President Roosevelt broke it by standing for a third term in 1940.

As regards the respective powers of the American President and his opposite number in India the first thing to be noted is that whereas the American President presides over a weak Centre, the Indian President will preside over a strong Centre. Particularly, the emergency powers given to the Indian President to suspend the autonomy of the States in times of crises are such as are not enjoyed by the American President. In financial emergencies, the Indian President will have the power of reducing the salaries and allowances of all Government officials, whether of the States or of the Union, including the salaries and allowances of the Judges of the Supreme Courts and the High Courts. And apart from these emergency powers, the President of India has been given a formidable list of other executive, financial and legislative powers. He can declare war and conclude peace. He can, like the American President, *veto* laws made by Parliament. Such *veto* can, however, be over-ridden by a simple majority in Parliament, whereas in America it requires a two-thirds majority in Congress.

In spite of the frightening list of powers vested in the President of India, it is clear, he will be far less powerful than the American President who is said to wield "the

largest amount of authority ever wielded by any man in a democracy." For the President of India will have to exercise almost all his powers under the Constitution on the advice of the Ministry, which will be responsible to the Lower House of Parliament. In America, the Cabinet officers are mere servants of the President. They are not responsible to the Congress, nor have they any power to speak on the floor of the Congress. The President dominates the American scene like a colossus. Compared to him the Cabinet officers have very little importance. "The President", says Laski, "in a word, symbolises the whole nation in a way that admits of no competitor while he is in office. Alongside his, the voice of a Cabinet officer is, at best, a whisper, which may or may not be heard." The American President has thus the power of determining the policy of the Government, independently of the advice of his Cabinet officers who are some mere helpers appointed by him to be in charge of departments. All policies are identified with him. "A decision of the Supreme Court is regarded as adverse to *his* policy; a defeat in Congress is a blow to *his* prestige; the mid-term congressional elections affect *his* policy, for good or ill. No one thinks of them in terms of their effect upon his Cabinet."

Here in India, however, the fact that there will be a Parliamentary form of Government in which the Cabinet will be responsible to the Lower House of Parliament will severely limit the sphere of Presidential discretion. Here the President—though he will not always be bound to accept the Cabinet's advice—will not normally dare to disregard such advice, since the Cabinet will control the majority in the Lower House and will pilot all important legislation through Parliament. It is most probable that here the Prime Minister will be the leader of a powerful party and his colleagues will enjoy the confidence of that party. And by resigning its

office the Cabinet will have the power of creating a deadlock which it will be beyond the powers of the President to resolve except by dissolving the Lower House and appealing to the country. But that will be a hazardous course for him to take, for if the same parties are returned at the next elections, it will mean a clear verdict of the people against him.

In view of all these facts, it will be extremely difficult for the Indian President to disregard the advice of his Ministers in the normal day-to-day exercise of his powers. The President of India will, therefore, be far less powerful than the American President. His position will be somewhere between the French President and the American President and certainly it will be nearer to the former than the latter.

The Vice-President —There will be a Vice-President of the Indian Union. The Vice-President will be elected by a joint sitting of both Houses of Parliament in accordance with the system of proportional representation by means of the single transferable vote. The voting shall be by secret ballot. To be eligible for the office of the Vice-President a person must (*a*) be a citizen of India, (*b*) must have completed the age of thirty-five years, (*c*) must be qualified for election as a member of the Council of States and (*d*) must not hold any office of profit under the Government of India or any State Government of India or any State Government or any local authority subject to the control of these Governments. (Provisions exactly similar to those relating to the President are made to provide that the offices of the President or the Vice-President or of the Governors or Ministers of States are not to be regarded as offices of profit in this connection).

The Vice-President shall not be member of either House of Parliament or of a House of a State Legislature. The Vice-President shall be the ex-officio Chairman of

the Council of States and hold office for a term of five years. In case of any vacancy in the office of the President by reason of his death, resignation or removal the Vice-President will act as the President till a newly elected President enters upon his office. It is provided that an election to fill a vacancy in the office of the President occurring by reason of his death, resignation or removal shall be held as soon as possible after, and in no case later than six months, from the date of such vacancy. In the event of the President's temporary inability to discharge his functions owing to absence or illness or any other cause, the Vice-President is to discharge those functions till they are resumed by the President. The Vice-President may resign his office by writing to the President under his own hand. He may be removed for incapacity or want of confidence by a resolution passed by a majority of all the then members of the Council and agreed to by the House of the People.

CHAPTER XI

THE CABINET

ARTICLE 74 lays down that there shall be a Council of Ministers with the Prime Minister at the head to aid and advise the President in the exercise of his functions. The question whether any or what advice was tendered by Ministers to the President shall not be inquired into in any court. Article 75 says that the Prime Minister shall be appointed by the President and other Ministers are to be appointed by him on the advice of the Prime Minister. The Council of Ministers shall be collectively responsible to the House of the People. Unless a Minister becomes a member of either House of Parliament within a period of

six months from the date of his appointment he shall cease to be a Minister at the expiration of the period. The salaries and allowances of ministers are to be determined by Parliament from time to time.

Article 77 provides that it shall be the duty of the Prime Minister to keep the President informed of all decisions of the Council of Ministers relating to the administration of affairs and also to furnish him with such information about the Union affairs and proposals for legislation as the President may call for. The Prime Minister must also submit, if the President so requires, for the consideration of the Council of Ministers any matters on which a decision has been taken by a Minister but which has not been considered by the Council.

Though the President will not be a mere figure-head, yet, as has been already pointed out, in normal day-to-day affairs, the Cabinet's voice will be predominate. The Cabinet will shoulder tremendous responsibility and and will wield enormous power. Its normal functions will be the administration of the affairs of the Central Government through the various departments. It will formulate policy and co-ordinate the activities of all the departments. It will determine the legislative programme and will enjoy the initiative in introducing and passing all important laws. This initiative will be in its hands because it will have majority support in the House of the People. Any Bill not coming from the Government party will have little chance of getting passed in the Legislature. The finacial power of the Cabinet will be very great. It will prepare the Budget and as no financial Bill can be introduced without the President's consent all such Bills will practically emanate from it. It will also determine the foreign policy of the state. It will thus be greatly able to influence, and set the pattern of, activities even in matters falling outside the

jurisdiction of the Centre. It will be, in an important sense, the central directing force in the constitutional machinery. The position of the Cabinet, it is obvious, will be more or less like that of the British Cabinet.

Responsible Government—As has been already mentioned, the Constitution lays down that the Council of Ministers shall be collectively responsible to the House of the People. This means that the Council of ministers will continue in office only so long as it enjoys the confidence of the House of the People. On any clear indication that the House has no confidence in the Ministers, they must resign in a body.

It is interesting to note that in India the system of responsible Government will be based on clear constitutional provisions. In Great Britain the system of responsible Government is based entirely on convention, the Cabinet being unknown to the British Constitution. The Canadian Constitution also does not mention Ministers or their responsibility to the Legislatures of the Centre or the Provinces. So in Canada, too, the system of responsible Government is wholly based on conventions. Again, though the Australian constitution and the constitution of the Union of South Africa mention Ministers, they say nothing about their responsibility to the Legislature. Hence in Australia and South Africa, also, the principle of responsibility of the executive to the Legislature rests almost wholly on conventions. In the constitution of the Irish Free State, however, both Ministers and their responsibility to the Dail Eireann are clearly mentioned. The constitution of the Fourth Republic of France also expressly provides for the responsibility of the Cabinet to the Lower Chamber of Parliament. Thus the new Constitution of India is in this respect similar to the Irish constitution and that of the Fourth Republic.

Collective Responsibility—The Council of Ministers, according to the Constitution, shall be collectively responsible to the House of the People. Collective responsibility of the Ministers means that the defeat of a Minister in the Parliament on any issue will mean the defeat of the whole Cabinet. An attack against a Minister will also mean attack against the entire Cabinet. Collective responsibility also involves that when a proposal has been made by a Minister it will be regarded as the proposal of the Government, even if that proposal has not been approved by the Cabinet.

Collective responsibility further involves that where a decision has been made by the Cabinet, the dissentient members must either resign or, if they do not resign, must be prepared to defend that decision. Unless they resign, they must not speak or vote against that decision. Under a system of collective responsibility, no Minister is allowed to vote against a proposal emanating from the Government. It may be mentioned, however, that in Britain where the system of collective responsibility is in existence, questions used to be left sometimes in the past as "open questions" on which the Ministers could speak or vote as they liked. In 1932, some of the Ministers of the coalition Government under the premiership of Mr. MacDonald were allowed to speak and vote against the Government on the tariff question. The existence of these precedents, however, does not mean that they will necessarily govern parliamentary practice in this country.

It must be understood that under a system of collective responsibility, no Minister should make any public statement that goes against the policy of the Government. Nor should he without consulting his colleagues make any statement that may commit the Government in any way.

Collective responsibility, however, does not mean that the Cabinet will accept the responsibility for an error of

judgment or mal-administration by any individual Minister. Nor, if any one or more Ministers are found guilty of corrupt practice, can the Cabinet as a whole be made responsible for it. For these faults and lapses it is the Ministers concerned and not the Cabinet as a whole that will be called upon to resign.

It may be recalled that though the Government of India Act, 1935 did not expressly provide for the responsibility of the Ministers, in practice a system of collective responsibility has been developed in the various provinces. The system is, therefore, far from unknown to the people and politicians of this country.

The Prime Minister—The Constitution expressly provides for the office of the Prime Minister. The Prime Minister was, it may be noted, unknown to the British Constitution till 1905. A Royal Proclamation issued in that year gave precedence to Prime Minister next to the Archbishop of York. Later an Act of Parliament fixed the salary of the Prime Minister and thus recognised his position.

The position of the Prime Minister will be a pre-emient one. He will be truly the *primus inter pares,* that is, the first among equals, and more than that, for it is he who will choose the other Ministers. Though the Constitution does not define the relation of the Prime Minister with other Ministers, it is obvious, that he will act as their leader, preside over Cabinet meetings and will play a guiding role in the determination of policy. In Parliament he will be expected to speak usually on all general questions of policy as well as on all other important questions. If he happens to be a man of personality, the Indian Prime Minister will be one of the most highly powerful functionaries in the world.

The position of the Indian Prime Minister will be more or less analogous to that of the British Prime Minister. In spite of the fact that the King in Britain is a figurehead and

the Indian President will not be so powerless, the Prime Minister of India is sure to occupy a key position, like that of the British Prime Minister, in the constitutional structure of India. He will be, most probably, the leader of a powerful party like the British Prime Minister and will wield all the authority of that position. He will not only choose his colleagues, but will also be able to "shuffle his pack as he pleases", that is, he will be able to force a Minister to resign and to choose a new Minister in his place. More than any other man in the country, he will shape and determine the country's internal and foreign policy. All the wide powers vested in the Centre including the emergency powers of the President will be exercised mainly on his advice. In war-time he will wield almost dictatorial powers. In fact, as in Britain, a general election for the House of the People may become in reality the election of a Prime Minister.

A Loop-hole—It will be seen that a Minister can be a member of either House of Parliament. As some of the members in the Upper House, that is, the Council of States, will be nominated, it is clear that a nominated member can also be a Minister. (For a period of ten years from the commencement of the Constitution the House of the People may have two nominated Anglo-Indian members—see next chapter). Here is a loop-hole for bringing into the Cabinet unpopular elements. It is quite conceivable that persons who are too un-popular to be elected to Parliament either directly or indirectly may sometimes be nominated to the Upper House and thereafter appointed as a member of the Cabinet. The system of collective responsibility, however, under which the defeat of a Minister means the defeat of the Cabinet, will exercise a salutary check on such back-door method of bringing unrepresentative elements into the Cabinet.

CHAPTER XII

PARLIAMENT

THE Central Legislature in India will be called Parliament. Parliament which will be bicameral will consist of the President and two Houses. The Lower House will be known as the House of the people and the Upper House as the Council of States. The Houses of Parliament must be summoned at least twice every year and six months shall not intervene between their last sitting in one session and their first sitting in the next session. Subject to this provision, the President may from time to time (*a*) summon the Houses or either House of Parliament to meet, (*b*) prorogue the Houses and (*c*) dissolve the House of the People.

The Lower House —The House of the People will consist of not more than five hundred members directly elected by the people. The constituencies will be territorial and the election will be on the basis of adult suffrage. That is, every citizen who is not less than twenty-one years of age and is not otherwise disqualified on the ground of non-residence, unsoundness of mind, crime or corrupt or illegal practice will be a voter. The proportion of electoral representation will be not less than one representative for every 750,000 of the population and not more than one representative for every 500,000 of the population. The ratio of representation must be, as far as possible, uniform throughout India. Upon the completion of each census the representation of the several territorial constituencies must be readjusted according to law made by Parliament.

In spite of the provision for universal adult suffrage, some special provisions have been made for the representation of minorities in the House of the People. Article 330

provides that seats shall be reserved in the House of the People for (*a*) the Scheduled Castes; (*b*) the Schedued Tribes except the Scheduled Tribes in the tribal areas in Assam and (*c*) the Scheduled Tribes in the autonomous districts of Assam. (See Chs. XXIV and XXVII). The reservation will be made in the population ratio of the Scheduled Castes and the Scheduled Tribes. A special provision has also been made in respect of the Anglo-Indian Community. If the President is of the opinion that the Anglo-Indian community is not adequately represented in the House of the People, he may nominate not more than two members of the community to the House. All these special provisions relating to the Scheduled Castes, the Scheduled Tribes and the Anglo-Indian community will cease to have effect at the end of ten years from the commencement of the Constitution.

To be qualified, a candidate for election to the House of the People must be a citizen of India, must be not less than twenty-five years of age and must possess such other qualifications as may be prescribed by Parliament by any law. A person shall be disqualified to be chosen as, or to be, a member of either House of Parliament (*a*) if he holds any office of profit under the Government of India or any State Government other than an office declared by Parliament by law not to disqualify its holder; (*b*) if he is of unsound mind and stands so declared by a competent Court; (*c*) if he is an undischarged insolvent; (*d*) if he is not a citizen of India or has voluntarily acquired the citizenship of a foreign State, or is under any acknowledgment of allegiance or adherence to a foreign State; and (*e*) if he is so disqualified by or under any law made by Paliament. If a person becomes subject to any of these disqualifications, his seat shall become vacant. If any question arises whether a member of Parliament is subject to any of these disqualifications, the decision of the President given in accordance

with the opinion of the Election Commission (see chapter on Elections) shall be final.

The House of the People will choose two members of the House to be its Speaker and Deputy Speaker respectively. Unless sooner dissolved, the life of the House will be five years from the date appointed for its first meeting and the expiration of this period will operate as the dissolution of the House. This period may, however, be extended by Parliament while a Proclamation of Emergency is in operation for a period of one year at a time but not exceeding in any case beyond a period of six months after the Proclamation has ceased to operate.

The Council of States—The Council of States will be a permanent House and not subject to dissolution, with one-third of its members retiring every second year. It will consist of not more than two hundred and fifty members. Of these members, twelve will be nominated by the President. These twelve members shall be persons having special knowledge or practical experience in the following matters: Letters, Art, Science and Social Services. The rest of the members in the Council of States will be representatives of the States. The representatives of States specified in Parts A and B of the First Schedule will be elected by the elected members of the Legislatives Assemblies of these States. The representatives of States specified in Part C of the First Schedule will be chosen in such manner as Parliament may by law prescribe. The allocation of seats will be as follows:—
(A) Assam—6, Bihar—21, Bombay—17, Madhya Pradesh—12, Madras—27, Orissa—9, Punjab—8, The United Provinces—31, West Bengal—14 (Total 145).

(B) Hyderabad—11, Jammu and Kashmir—4, Madhya Bharat—6, Mysore—6, Patiala and East Punjab States Union —3, Rajasthan—9, Saurashtra—4, Travancore-Cochin—6, Vindhya Pradesh—4. (Total 53).

(C) Ajmer and Coorg—1, Bhopal—1, Bilaspur and Himachal Pradesh—1, Cooch-Behar—1, Delhi—1, Kutch—1, Manipur and Tripura—1. (Total 7).

To be qualified, a candidate for election to the Council of States must be (*a*) a citizen of India; (*b*) must be not less than thirty years of age and (*c*) must possess such other qualifications as may be prescribed by Paliament. The disqualifications for membership of the Council of State shall be the same as have been mentioned in connection with the Lower House.

The Vice-President of India will be the ex-officio Chairman of the Council of States. The Council will choose one of its members to be its Deputy Chairmen.

Privileges and Immunities of Members—Subject to the rules of procedure, there will be freedom of speech in Parliament. No member will be liable to any proceedings in any court for anything said or any vote given by him in Parliament or in any of its Committees. Nor will he be so liable in respect of any publication by or under the authority of the House. In other respects, the members' privileges and immunities, till they are defined by Parliament shall be such as are enjoyed by the members of the House of Commons of the British Parliament at the commencement of the Constitution.

The members of either House of Parliament shall receive such salaries and allowances as may from time to time be determined by Parliament.

COMMENTS

(1) **Sovereignty of Parliament**—Parliament in India will be sovereign. It will be independent of all external authority. Internally, however, its sovereignty will be limited by the sphere of the States, as is the case with every federal system of Government. Every federal constitution

demarcates the respective spheres of jurisdiction of the Centre and the units and invests the Judiciary with the authority to prevent the encroachment by either of them into the sphere of the other. The same principle has been followed in our Constitution. (The distribution of legislative powers between the Centre and the States in the Constitution has been dealt with in another chapter).

(2) **Judicial Review**—As in the United States, the laws made by Parliament will be subject to Judicial Review. That is, the Judiciary in India will have the power to declare an Act of Parliament unconstitutional and void on the ground that it violates the provisions of the Constitution. This will be a powerful safeguard of the liberty of the citizens because it will prevent the executive, which will control the majority in Parliament, from infringing the liberty of the people in an unconstitutional manner. It may be noted that the system of Judicial Review does not exist under the British Constitution. No English court can declare an Act of Parliament as unconstitutional. The courts in England can, however, declare the Orders-in-Council or rules made by administrative authorities as *ultra vires* of the laws under which they have been made and can refuse to enforce them.

(3) **The System of Election**—The Constitution while providing for a system of direct election to the House of the People does not mention the system of proportional representation. In fact, the framers of the Constitution wanted to avoid the proportional representation system on the ground that it is unsuitable for a Parliamentary system of government. Any minority or group which can pool a requisite number of votes can under a system of proportional representation be sure of having one or more of their own candidates elected to the legislature. This unfortunately results in the legislature being divided into a large number

of groups or parties, none of which may possess an absolute majority in the House. In such a situation coalition governments become inevitable and these governments, as is common knowledge, are very unstable. Any group or party in such governments may at any time withdraw from the coalition from motives of self-interest and may thereby cause their downfall. This is why the system of proportional representation is unsuitable to a Parliamentary system of government. A Parliamentary system of government works best under a two-party system, as in England. The system of proportional representation is inimical to the growth of a two-party system. It is well, therefore, that the framers of the Constitution have deliberately avoided the incorporation of the system in our Constitution, so far as the election to the popular Chamber is concerned. It may be recalled that the British Parliament in 1918 rejected the recommendation made in favour of the system of proportional representation by the Speaker's Conference. It was feared by Parliament that the acceptance of the recommendation would lead to the break-up of the two-party system in Great Britain which has worked so well for a long time.

The system of proportional representation is also a complicated one and not suitable for illiterate voters. The English system of single member constituencies will, therefore, be more suitable to India than the system of proportional representation so far as election to the House of the People is concerned.

The Legislative Procedure—All Bills except Money Bills and other financial Bills can originate in either House. Money Bills and other financial Bills can only originate in the House of the People. Generally a Bill shall not be deemed to have been passed by the Houses of Parliament unless it has been agreed to by both Houses with or without amendment or with such amendments only as are agreed

to by both Houses. The Constitution provides for joint sittings of both Houses in certain cases relating to Bills which have been passed by one House and transmitted to the other House. The President by notification can summon the Houses to meet in a joint sitting if such a Bill is rejected by the other House or if there is final disagreement between the two Houses as to the amendments to be made to the Bill or if more than six months elapse from the date of the reception of the Bill by the other House without the Bill being passed by it. If at a joint sitting the Bill is passed by a majority of the members present and voting, the Bill shall be deemed to have been passed by both Houses. There is a restriction on the amendments that can be considered by a joint sitting. If the Bill has been passed by the other House with amendments and returned to the House to which it originated, only these amendments can be considered at the joint sitting and also such other amendments as are relevant to the matters with respect to which the Houses have not agreed. But if the Bill has not been so passed and returned by the other House to the House of its origin, then no amendment can be proposed except those that are made necessary by the delay in the Bill's passage.

A special procedure, however, has been laid down for Money Bills. A Money Bill, as has been said above, cannot be introduced in the Council of States. After a Money Bill has been passed by the House of the People, it shall be transmitted to the Council of States for its recommendations. The Council of States must, thereafter, return the Bill with its recommendations within fourteen days from the date of its receipt. If it does not return the Bill within this period, the Bill shall be deemed to have been passed by both Houses in the form in which it was passed by the Lower House. If the Upper House, however, returns the Bill to the Lower House within this period with its recommendations, the

Lower House shall have authority either to accept or reject any of these recommendations. The Bill shall, thereafter, be deemed to have been passed by both Houses of Parliament. It is laid down by Article 110 that a Bill shall be deemed to be a Money Bill if it contains only provisions dealing with all or any of the following matters: (*a*) the imposition, abolition, remission, alteration or regulation of any tax, (*b*) the regulation of the borrowing of money; (*c*) the custody of the Consolidated Fund or the Contingency Fund of India, the payment of money into or withdrawal of money from any such fund; (*d*) the appropriation of moneys out of the Consolidated Fund of India; (*e*) the declaring of any expenditure as expenditure charged on the Consolidated Fund of India or the increasing of the amount of any such expenditure; (*f*) the receipt of money on account of the Consolidated Fund of India or the public account of India or custody or issue of such money or the audit of the accounts of the Union or of a State; (*g*) any matter incidental to any of the matters specified in items (*a*) to (*f*). (For Consolidated and Contingency Funds, see Ch. XX).

Clause (2) of Article 110 makes it clear that a Bill shall not be considered to be a Money Bill by reason only that it provides for the imposition of fines or other pecuniary penalties, or for the demand or payment of fees for licences or fees for services rendered or by reason that it provides for the imposition, abolition, remission, alteration or regulation of any tax by any local authority or body for local purposes. The decision of the Speaker of the House of the People shall be final on the question whether a Bill is a Money Bill or not.

After a Bill has been passed by both Houses it shall be sent to the President and the President shall declare either that he assents to the Bill or that he withholds assent therefrom. The President may as soon as possible return

the Bill, if it is not a Money Bill, to Parliament with his recommendations and Parliament will then reconsider it accordingly and pass it again with or without amendments. The Bill will, thereafter, be presented again to the President for assent and the President shall not withhold his assent therefrom.

The Constitution lays down that, save as otherwise provided, all questions at any sitting of either House of Parliament or at joint sittings of the Houses will be determined by a majority of votes of the members present ~~and~~ at voting. The Speaker or Chairman or a person acting as such is not to vote in the first instance but has a casting vote in case of equality of votes. The quorum for either House will be one-tenth of the total membership of the House. Parliament, however, will have power to alter the quorum.

It has been provided that each House of Parliament will have authority to make rules for the procedure and conduct of its business. As regards the rules of procedure for joint sittings, these will be framed by the President in consultation with the Speaker and the Chairman of the Lower and the Upper House. At a joint sitting of the Houses, the Speaker will preside. In his absence any other person as determined by the rules of procedure will be the president.

The language for the transaction of business in Parliament shall be Hindi or English subject to the provisions of the Constitution in respect of official language. (See the chapter on official language) Unless Parliament otherwise provides, at the expiration of fifteen years from the commencement of Parliament, this language shall be only Hindi. It is provided that the Speaker or the Chairman as the case may be may permit any member having inadequate knowledge of Hindi or English to address the House in his mother tongue.

Courts shall have no authority to enquire into the validity of procedures in Parliament. No discussion, it is laid down, shall take place in Parliament with respect to the conduct of any judge of the Supreme Court or any High Court except in connection with a motion for presenting an address to the President for the removal of any Judge, as provided by the Constitution (Chapters on High Courts and the Supreme Court).

Financial Procedure—The main features of the financial procedure will be firstly, an annual financial statement, secondly, the demands for grants and thirdly the Appropriation Bills, and other Financial Bills.

In respect of every finacial year, the President shall cause to be laid before both Houses of Parliament an annual financial statement showing the estimated receipt and expenditure for the Government of India for that year. The estimates of expenditure shall show separately (*a*) the sums required to meet expenditure charged upon the Consolidated Fund of India; and (*b*) the sums required to meet other expenditure.

The following expenditure shall be expenditure charged on the Consolidated Fund of India:—(*a*) the emoluments and allowances of the President and other expenditure relating to his office; (*b*) the salaries and allowances of the Chairman and the Deputy Chairman of the Council of States and the Speaker and the Deputy Speaker of the House of the People; (*c*) debt charges; (*d*) the salaries and allowances and pensions payable to or in respect of Judges of the Supreme Court; (*e*) the pensions payable to or in respect of Judges of the Federal Court; (*f*) the pensions payable to or in respect of Judges of any High Court which exercises jurisdiction in relation to any area included in the territory of India or which at any time before the commencement of this constitution exercised jurisdiction within any

area included in the States for the time being specified in Part A of the First Schedule; (*g*) the salary, allowances and pension payable to or in respect of the Comptroller and Auditor General of India; (*h*) any sums required to satisfy any judgment, decree or award of any court or arbitral tribunal and (*i*) any other expenditure declared by this Constitution or by Parliament by law to be so charged. It may be mentioned that the sums necessary to meet the administrative expenses of the Supreme Court and privy purses promised to Rulers are declared by Arts. 146 and 291 respectively to be sums that shall be charged on the Consolidated Fund of India. Also, Article 322 declares that the expenses of the Union Public Service Commission shall be charged on the Consolidated Fund of India.

The expenditures charged on the Consolidated Fund of India shall be non-votable but these can be discussed in either House of Parliament. The estimates relating to other expenditure shall be submitted to the House of the People in the form of demands for grants and the House shall have power to assent or refuse to assent to any demand or reduce its amount. No demand for a grant shall be made except on the recommendation of the President.

After the grants have been made, a Bill shall be introduced in the House for the appropriation out of the Consolodated Fund of India all the grants made by the House as well as the expenditure charged on the Consolidated Fund of India. No money can be withdrawn from the Consolidated Fund of India except under the Appropriation Act.

Apart from the normal demands for grants the President is authorised by the Constitution to place before Parliament, if he considers it necessary, demands for additional or supplementary or excess grants and the same procedure must be gone through in respect of them as in the case of the

normal annual demands for grants. The House of the People has been empowered to make advance grants or even exceptional grants to which also the normal procedure for grants or appropriation will apply.

No financial Bill can be introduced in the Council of States and such a Bill cannot be moved except on the recommendation of the President. It must be understood that such recommendation is not necessary for the moving of an amendment making provision for the reduction or abolition of any tax.

COMMENTS AND CRITICISM

(1) **Control over Finance**—It will be seen that the Upper House, the Council of States, will have very limited power in finacial matters. It will have no voice so far as demands for grants are concerned. And as regards the Money Bills, the Lower House will have authority to reject its suggestions and recommendations. Even its power of delaying the passing of a Money Bill has been limited to a maximum of fourteen days only.

In theory the members of the House of the People will be representatives of the people of the nation, while the members of the Council of States, will represent the States, as such. It has been thought that it is the national representatives and not the States' representatives who should have the real control over finance.

It is interesting to compare the limited power of the Upper House in financial matters with that of the House of Lords in England. The Parliament Act of 1911 has practically taken away the powers of the House of Lords in matters of finance. The relevant section of the Act states: "If a money bill, having been passed by the House of Commons, and sent up to the House of Lords at least one month before the end of the session, is not passed by the

House of Lords without amendment within one month after it is sent up to that house, the bill shall, unless the House of Commons direct to the contrary, be presented to His Majesty and become an Act of Parliament on the royal assent being signified, notwithstanding that the House of Lords have not assented to the bill." Thus the House of Lords has no power of amending a Money Bill and can delay it for a month only. The Upper House in India can amend a Money Bill only if that amendment is accepted by the Lower House and its power of delaying a Money Bill is limited to fourteen days only.

The position of the Upper House of the U.S. Congress, namely, the Senate, in financial matters, is almost co-ordinate to that of the Lower House, the House of Representatives. That is, both the Houses enjoy almost equal authority in financial matters. The financial powers of the Lower House is only slightly greater that those of the Senate because the constitution lays down that "all Bills for raising revenue shall originate in the House of Representatives." But the Senate has authority to amend the Bills for raising revenue and thereby practically originate new revenue-raising measures. As for Bills relating to expenditure, they may under the Constituion originate in either House. But, by usage it is the House of Representatives which originate such Bills and the annual budget is first submitted to that House. The Senate, however, can amend such Bills. It actually sometimes originates Bills which incidentally involve expenditure and appropriation of funds, though their main purpose may be different. Thus, whereas the U.S. Senate is, in respcet of financial powers, a body co-ordinate to the House of Representatives, in India the Council of State will be subordinate to the House of the People in such matters. An important point to remember is that in modern states, though the ultimate control over finance is vested in the

Legislature, in practice it is the executive that exercises complete control over it. Modern States are becoming more and more welfare states. They are no longer police states. Their social activities have immensely multiplied and their income and expenditure have increased enormously. Now-a-days, it is not even possible for an ordinary member of the Legislature to have access to the figures, unless supplied by the Government, which are necessary for effective criticism of the items of Government expenditure. The legislators, in these matters, have become completely dependent upon the executive. An executive which controls a majority in the legislature has, therefore, almost absolute control over finance. In India, as in England, all the financial Bills will require the previous recommendation of the executive for introduction in the Legislature. No demand for grant also can be made except on the recommendation of the President, that is, of the executive. So, ordinarily, it is the executive that will have almost absolute control over finance.

(2) **Other Legislation**—Apart from finance, in all other matters of legislation, the two Houses will enjoy co-equal authority. The Lower House has no power to over-rule the Upper House. In England, however, under the Act of 1911 the House of Commons can over-rule the House of Lords in almost all matters by following a certain procedure. Under that Act, the House of Commons, in spite of the Lords' disapproval of a Bill, can make it an Act of Parliament by passing it in three successive sessions in not less than two years' time. Thus the House, if it so desires, can pass certain laws alone. But, except in financial matters, the Lower House of the Indian Parliament cannot pass any law alone.

(3) **Joint Sittings**—Joint sittings have been provided for to meet certain situations including the final disagreement

between the two Chambers. In case of disagreement in America between the House of Representatives and the Senate, a compromise is effected by means of a conference committee on which both the Houses are represented by small groups of legislators of each House. Each of these groups votes as a unit. So the compromise is effected by bargaining and it generally depends on the bargaining power of the persons which side gets the better of the other. Since, in the Parliamentary joint sittings in India, a majority of those present and voting will decide the issues, it is the Lower House (which is the more numerous body) whose views are like to predominate at such sittings.

(4) **The Executive Veto** —Generally the executive in a state is given the power to approve or disapprove of the measures passed by the Legislature, the approval being essential to the validity of a legislation. This is called the 'veto power' of the executive. In the English Constitution, the veto power of the Crown is absolute, that is, it cannot be over-ridden by the Legislature. But this veto power has fallen into desuetude and has not been exercised for a long time. It is unlikely that it will be ever exercised in future. In the U.S.A., the President has the right to veto a measure passed by the Congress, but his veto is a qualified one. It can be over-ridden by the Legislature by passing the measure again by a two-thirds majority. The President in India has been given the veto power but it will be merely suspensive in character. The two Houses of the Legislature have been given the power to over-ride the veto by passing the measure in question once again and by a simple majority. Hence, the veto power of the President will not be an effective power in India.

CHAPTER XIII

THE SUPREME COURT

A Supreme Court is an essential element in a federal government. The chief function of the Supreme Court is to interpret the constitution authoritatively, as well as to decide disputes between the central and provincial or state governments regarding the demarcation of powers. The Constitution of India, therefore, sets up a Supreme Court.

The Supreme Court will consist of the Chief Justice of India and seven other Judges. Parliament, however, has been empowered to vary this number by law. All the Judges of the Supreme Court will be appointed by the President after consultation with such Judges of the Supreme Court and of the High Courts in the States as the President may think necessary. It is provided that in the case of appointment of a Judge, other than the Chief Justice, the Chief Justice of India must be consulted. The age of retirement of the Judges will be 65 years. A person will not be qualified for appointment as a Judge of the Supreme Court unless he is a citizen of India and (*a*) has been for at least five years a High Court Judge; or (*b*) has been for at least ten years an advocate of a High Court or of two or more such Courts in succession; or (*c*) is in the opinion of the President a distinguished jurist. No person, it is laid down, who has held office as a Judge of the Supreme Court shall plead or act in any court or before any authority within the territory of India. The salary of the Chief Justice will be Rs. 5,000/- per month and that of other Judges Rs. 4,000/- per month. The Constitution provides for the appointment of *ad hoc* judges for specific purposes and also for requiring the attendance of retired Judges of the Supreme Court and the Federal Court with their consent.

The Supreme Court will sit in Delhi or in such place or places as the Chief Justice of India may, with the President's approval, appoint from time to time. The Supreme Court will be a court of record and will have all the powers of such a court including the power to punish for the contempt of itself.

The Supreme Court will have an original as well as an appellate jurisdiction.

It will have original jurisdiction, to the exclusion of any other Court, in any dispute (*a*) between the Government of India and one or more States; or (*b*) between the Government of India and any State or States on one side and one or more other States on the other or (*c*) between two or more States, if and in so far as the dispute involves any question, whether of law or of fact, on which the existence or extent of a legal right depends. The following matters are excluded from the original jurisdiction of the Supreme Court:—

(1) any dispute to which a State specified in Part B of the First Schedule is a party if the dispute arises out of any treaty, or covenant or a similar instrument executed before the commencement of the Constitution and in force after it;

(2) any dispute to which any State is a party if the dispute arises out of any provision of a treaty or agreement or a similar instrument which provides that the said jurisdiction shall not extend to such a dispute.

An appeal shall lie to the Supreme Court from any judgment or decree or final order of a High Court in any case, if the High Court certifies that the case involves a substantial question of law as to the interpretation of the Constitution. If the High Court refuses to give such a certificate, the Supreme Court may grant special leave for

such appeal if it is satisfied that the case involves a substantial question of law as to the interpretation of this Constitution.

Apart from this special provision, the appellate jurisdiction of the Court can be divided under two heads, (1) civil and (2) criminal. In civil cases, an appeal shall lie to the Supreme Court from the judgment of a High Court if the High Court certifies that (*a*) the amount or value of the subject matter in dispute is not less than Rs. 20,000/- or such sum as may be specified by Parliament or (*b*) that the judgment involves a claim or question respecting property of the like amount or (*c*) that the case is a fit one for appeal to the Supreme Court. If, however, the judgment appealed from affirms the decision of the court immediately below, in any case other than a case referred to in item (*c*), the High Court must further certify that the appeal involves some substantial question of law.

It has been provided that no appeal shall lie to the Supreme Court from the judgment, decree or final order of one judge of a High Court.

In criminal cases, an appeal shall lie to the Supreme Court from the judgment of a High Court if the High Court (a) has on appeal revised the order of acquital of an accused person and sentenced him to death; or (*b*) has withdrawn for trial before itself any case from any court subordinate to its authority and has in such trial convicted the accused person and sentenced him to death; or (*c*) certifies that the case is a fit one for appeal to the Supreme Court. Parliament has been empowered to enlarge the appellate jurisdiction of the Supreme Court in criminal matters.

The Supreme Court has been given wide powers to grant special leave to appeal to it. The Constitution provides that the Supreme Court may, in its discretion grant special leave to appeal from any judgment or decree in any

matter passed by any court or tribunal in India, excepting the tribunals constituted by or under any law relating to the Armed Forces.

Parliament has been empowered to enlarge the jurisdiction and powers of the Supreme Court.

It has been already mentioned that the Constitution has conferred on the Supreme Court the power of issuing orders or writs, including writs in the nature of *habeas corpus, mandamus* and the like for the enforcement of the fundamental rights. The Constitution has, further, authorised Parliament to confer on the Supreme Court the power of issuing such writs in regard to other matters.

The law declared by the Supreme Court shall be binding on all Courts in India. The Supreme Court will have the power of reviewing any judgment pronounced by it.

The President has been empowered to seek the opinion of the Supreme Court on important questions of law and fact. And the Constitution has expressly provided that all judgments and opinions of the Supreme Court shall be declared in open Court. It is not clear whether an opinion of the Supreme Court will have binding effect.

It has been provided by the Constitution that the Judges of the Federal Court holding office immediately before the commencement of the Constitution shall, unless they have elected otherwise, become on such commencement the Judges of the Supreme Court.

CHAPTER XIV

THE GOVERNOR AND THE COUNCIL OF MINISTERS

In each of the States specified in Part A of the First Schedule there will be a Governor as the executive head. (In States specified in Part B of the First Schedule there will be a Rajpramukh in the place of the Governor, the powers and functions of the Rajpramukh being similar to those of the Governor).

The Governor will be appointed by the President and will hold office during the pleasure of the President. Subject to this provision, his tenure of office will be five years. To be eligible for appointment as the Governor, a person must be a citizen of India and must have completed the age of thirty-five years. The Governor will have an official residence and will receive such emoluments and allowances as may be determined by Parliament by law. Until provision is made by Parliament in this behalf, the Governor will receive Rs. 5,500/- per month plus such allowances and privileges as the Governor of the corresponding Province was entitled to immediately before the commencement of the Constitution. The Governor must not be a member of either House of Parliament or of a House of the Legislature of any State. If any such member is appointed Governor, his seat will be deemed to have been vacated from the date on which he enters upon his office. The Governor must not hold any other office of profit.

The powers of the Governor—The Constitution says that there shall be a Council of Ministers "to aid and advise the Governor in the exercise of his functions, except in so far as he is by or under this Constitution required to exercise his functions or any of them in his discretion." But, except in the case of Assam, the Governor has not been given any discretionary power by the Constitution. And in Assam the

Governor will act in his discretion only in respect of the administration of certain frontier tracts, which he will administer as the agent of the President.

So it may be said that the Governor is required by the Constitution in practically all matters to exercise his functions with the aid and advice of the Ministers. But the question is whether the Governor will always be bound to take the advice of the Ministry. If he is so bound he will be a mere nominal executive head, a figure-head; otherwise, he will have some real power. The framers of the Constitution intended that the Governor would act as a mere nominal head and this is why the idea of having an elected Governor was given up. But the language of the Constitution does not make it clear whether or not the Governor will be always bound to take the advice of the Ministry. If the constitutional conventions followed in other countries like Australia and Canada are any guide to this matter, certainly the Governor will have to act as a nominal head. But it is difficult to say how far the Engish constitutional conventions will be applicable to our Constitution and to the interpretations thereof. The extent and limitations of the Governor's powers are, therefore, a matter which the Courts in India will have to clarify.

The provisions of the Constitution, taken as a whole, however, make it clear that the Governor is expected, at least normally to act as a constitutional head and to carry out the advice of his Ministers. For the Constitution clearly states that the Council of Ministers will be collectively responsible to the Legislature. This certainly means that there will be a system of responsible government in the States under which the administration will have to be normally carried on according to the wishes and advice of a Ministry enjoying the confidence of the elected representatives of the people. It is also evident that, in practice, as the

Governor will be a nominated person, he will hardly dare to disregard the advice of the representatives of an elected Legislature who would symbolise the voice of the people. For, disregard of such advice may lead to the resignation of the Ministry making it necessary for the Governor to find an alternative team, which may not be available. That does not mean, however, that in extraordinary circumstances the Governor will not exercise his individual judgment. For instance, it seems, the Governor will not always be bound to accept an advice for dissolution of the Assembly given by his Ministry.

Keeping in view the general position of the Governor, let us see what specific powers have been given to him. The Governor's powers may be divided under four heads:— (1) executive, (2) legislative, (3) financial and (4) judicial.

Executive Powers—The executive power of the State will be vested in the Governor and is to be exercised by him either directly or through officers subordinate to him. The executive power of the State, it should be noted, would extend to the matters with respect to which the Legislature of the State will have power to make laws. In matters specified in the Concurrent List, the executive power of the State will be subordinate to the executive power of the Union. The Governor will make rules for the convenient transaction of the business of the State Government and for the allocation among his Ministers of the said business.

Legislative Powers –After a Bill is passed by the House or Houses of the Legislature of a State, it must be presented to the Governor for his assent. The Governor may assent to the Bill or withhold assent therefrom or he may reserve it for the President's consideration. He may return the Bill (if it is not a Money Bill) to the House or Houses for reconsideration but if it is passed again by the House or Houses with or without amendment, he must not withhold assent

therefrom. The Governor has also been given the power of reserving Bills for the consideration of the President. No Money Bills or other Financial Bills can be introduced in the Legislative Assembly except on the recommendation of the Governor. Amendments making provision for financial matters, too, cannot be moved except on the Governor's recommendation. This rule will not apply to amendments making provision for the reduction or abolition of a tax.

The Governor has been given the power of issuing Ordinances when the House or Houses of the Legislature are not in session. But all such Ordinances will cease to operate at the expiration of six weeks from the reassembly of the Legislature, or if before the expiration of that period a resolution disapproving it is passed by the Legislative Assembly and agreed to by the Legislative Council, if any, on the passing of the resolution or, as the case may be, on the resolution being agreed to by the Council. It has been provided that the Governor shall not without instructions from the President promulgate any such Ordinance (1) if a Bill containing the same provisions would have required the previous sanction of the President for introduction into the Legislature; or (2) if the Governor would have deemed it necessary to reserve a Bill containing the same provisions for the consideration of the President; or (3) if an Act of the Legislature containing the same provisions would under this Constitution have been invalid unless, having been reserved for the consideration of the President, it had received the assent of the President. As for item (1), it may be noted that, by Art. 304, Bills which seek to impose restrictions on the freedom of trade, commerce or intercourse with or within a state in public interest will require the previous sanction of the President for their introduction into the State Legislature. Regarding item (3), it should be remembered that (*a*) laws relating to compulsory acquisition of

property, (*b*) laws relating to matters in the Concurrent List which are repugnant to any Central law and (*c*) laws seeking to impose taxes on the sale or purchase of goods that are declared by Parliament by law to be essential for the life of the community will be invalid unless, having been reserved for the consideration of the President, they have received the President's assent.

Financial Powers —The Governor is required, in respect of every financial year, to cause to be laid before the House or Houses of the State Legislature "an annual finacial statement", showing the estimated receipt and expenditure of the State for that year. No demand for grant can be made except on the recommendation of the Governor. The Governor has also been empowered to cause to be laid before the House or Houses of the State Legislature statements for supplementary or additional expenditure or cause to be presented to the Legislative Assembly of the State demands for excess grants.

Judicial Powers —The Governor of a State will have the power of granting pardons, reprieves, respites or remissions of punishment or to suspend, remit or commute the sentence, of any person convicted of any offence against any law relating to a matter to which the executive power of the State extends.

The Council of Ministers –Article 163 says that there will be a Council of Ministers with the Chief Minister at the head to aid and advise the Governor in the exercise of his functions except in so far as he is by or under this Constitution required to act in his discretion. The Chief Minister will be appointed by the Governor and the other Ministers will be appointed by the Governor on the advice of the Chief Minister. The Ministers will be collectively responsible to the Legislative Assembly of the State. Curiously, it is also laid down that the Ministers shall hold office during the

pleasure of the Governor. In practice, it is evident, no Governor will dare to dismiss individual Ministers because of the principle of collective responsibility. Also, he will not be able to dismiss the Ministry as a whole so long as it will enjoy the confidence of the Legislative Assembly. A Minister will cease to be so if he is, for any period of six consecutive months, not a member of the Legislature. It is laid down that in Bihar, Madhya Pradesh and Orissa there shall be a Minister for tribal welfare. The Ministers will receive, until Parliament otherwise provides, such salaries and allowances as the Ministers of the corresponding Province used to receive immediately before the commencement of the Constitution.

(For comments on responsible government, collective responsibility etc. see chapter on 'the Cabinet'.)

CHAPTER XV

THE LEGISLATURE OF THE STATES IN PART A OF THE FIRST SCHEDULE

THE Legislature of every State (of Part A of the First Schedule) will consist of the Governor and a House or two Houses as the case may be. It is laid down that there are to be two Houses in the States of Madras, Bombay, Bengal, the United Provinces, Bihar and Punjab. In each of the other States, Orissa, Bihar and Madhya Pradesh (the C.P. and Berar) there is to be only one House.

When there are two Houses of the Legislature of a State, the Lower House is to be known as the Legislative Assembly, the Upper House as the Legislative Council. Where there is only one House, it is to known as the Legislative Assembly.

The House or Houses of a State Legislature must be summoned to meet twice at least every year and six months shall not intervene between their last sitting in one session and their first sitting in the next session. Subject to these provisions, a Governor may from time to time summon either House to meet, prorogue the House or Houses and dissolve the Legislative Assembly.

The Legislative Assembly—The Legislative Assembly of a State shall be composed of members chosen by direct election. The election shall be on the basis of adult suffrage. That is, every citizen who is not less than twenty-one years of age and is not otherwise disqualified on the ground of non-residence, unsoundness of mind, crime or corrupt or illegal practice shall be entitled to be registered as a voter at such elections. The constituencies will be territorial and the proportion of electoral representation (except in the case of the autonomous districts of Assam and the constituency comprising the cantonment and municipality of Shillong) be not more than one representative for every seventy-five thousand of the population. It is provided that the total number of members in the Legislative Assembly of a State shall in no case be more than five hundred or less than sixty. The ratio of representation must be, as far as possible, uniform throughout the State. Upon the completion of each census, the representation of the several territorial constituencies must be readjusted according to law made by the State Legislature.

Apart from these general provisions, some special provisions have been made for the representation of minorities in the Legislative Assemblies of the States. Article 332 provides that in the Legislative Assemblies of States for the time being specified in Part A (and Part B) of the First Schedule, seats shall be reserved for (*a*) the Scheduled Castes (*b*) the Scheduled Tribes except the Scheduled Tribes in the

tribal areas of Assam. It is also laid down that in the Legislative Assembly of Assam, the seats shall be reserved for the autonomous districts of that State. (See Chs. XXIV and XXVII) The reservation will be made in the population ratio of the Scheduled Castes and the Scheduled Tribes. In Assam, the reservation for the autonomous districts shall be in the population ratio of the districts, that is, in the ratio which the population of the districts bears to the total population of the State. It is further provided that no person who is not a member of a Scheduled Tribe of any autonomous district of Assam shall be eligible for election to the Legislative Assembly of the State from any constituency of that district except from the constituency comprising the cantonment and municipality of Shillong. A special provision has also been made for the Anglo-Indian community. If the Governor of a State is of opinion that the Anglo-Indian community is not adequately represented in the Legislative Assembly of a State, he may nominate such number of members of the community to the Legislative Assembly as he considers appropriate. All these special provisions for the Scheduled Castes and the Scheduled Tribes and the Anglo-Indian community shall cease to have effect at the end of ten years from the commencement of the Constitution.

To be qualified, a candidate for election to the Legislative Assembly of a State must be (*a*) a citizen of India, (*b*) must be not less than twenty-five years of age, and (*c*) must possess such other qualifications as may be prescribed by the State Legislature. A person shall be disqualified to be chosen as, and for being, a member of the Legislative Assembly (or of the Legislative Council) of a State (*a*) if he holds any office of profit under the Government of India or the Government of any State for the time being specified in the First Schedule other than an office declared by the

Legislature of the State by law not to disqualify its holder; (b) if he is of unsound mind and stands so declared by a competent court; (*c*) if he is an undischarged insolvent; (*d*) if he is not a citizen of India, or has voluntarily acquired the citizenship of a foreign State, or is under any acknowledgment of allegiance or adherence to a foreign state; (*e*) if he is so disqualified by or under any law made by the Legislature of the State. It is provided that for the item (*a*) a person shall not be deemed to hold an office of profit under the Government of India or the Government of any State for the time being specified in the First Schedule by reason only that he is a Minister for India or for any such State.

If any question arises as to whether a member of a House of a State Legislature is subject to any of these disqualifications, the decision of the Governor given in accordance with the opinion of the Election Commission shall be final.

The Constitution lays down some provisions dealing with the vacation of seats of persons elected to the State Legislatures. It is stated by Article 190 that no person shall be a member of both Houses of the Legislature of a State and that provision must be made by the State Legislature by law for the vacation by a person chosen a member of both Houses of his seat in one House or the other. Under the same article, no person can also be a member of the Legislatures of two or more States and unless a person who has been chosen a member of the Legislatures of two or more States resigns his seat in all but one of the States before the expiration of a period to be specified by the President in rules, his seat in all the Legislatures shall be vacant. Again, if a member resigns his seat by writing under his hand addressed to the Speaker or the Chairman as the case may be, his seat shall become vacant. If any member becomes subject to any of disqualifications (*a*) to (*e*) mentioned

above, then, too, his seat shall be vacant. Finally, if a member of a House of a State Legislature is without the permission of the House absent from all the meetings thereof for a period of sixty days, the House may declare his seat vacant. (In counting these sixty days no account shall be taken of any period during which the House is prorogued or adjourned for more than four consecutive days). All these provisions relating to the disqualification of members and the vacation of their seats shall, it should be noted, be applicable to members of both the Legislative Assembly and the Council of States.

Every Legislative Assembly shall choose two of the members of the House as the Speaker and the Deputy Speaker.

Unless sooner dissolved, the life of a Legislative Assembly shall be five years from the date appointed for its first meeting and the expiration of the said period shall operate as the dissolution of the Legislative Assembly. It has been provided that the said period may, while a Proclamation of Emergency is in operation, be extended by Parliament by law for a period not exceeding one year at a time and not extending in any case beyond a period of six months after a proclamation has ceased to operate.

The Legislative Council—The Legislative Council shall be a permanent House and not subject to dissolution, one-third of its members retireing every second year. Its membership shall not exceed one-fourth of the total number of members in the Legislative Assembly (of the State). It is provided that the total number of members shall in no case be less than 40. Until Parliament otherwise provides by law, the composition of the Legislative Council of a State shall be as follows:—

(*a*) as nearly as may be, one-third of the members are to be elected by electorates consisting of

members of municipalities, district boards and such other local authorities as Parliament may by law specify;

(*b*) as nearly as may be, one-twelfth of the members are to be elected by electorates consisting of persons residing in the State who have been for at least three years graduates of any university in the territory of India and persons possessing for at least three years qualifications prescribed by or under any law made by Parliament as equivalent to that of a graduate of any such university;

(*c*) as nearly as may be, one-twelfth are to be elected by electorates consisting of persons who have been for at least three years engaged in teaching in such educational institutions within the State, not lower in standard than that of a secondary school, as may be prescribed by or under any law made by Parliament;

(*d*) as nearly as may be, one-third to be elected by members of the Legislative Assembly of the State from amongst persons who are not members of the Assembly;

(*e*) the remainder (that is, one-sixth) shall be nominated by the Governor. These nominated members shall consist of persons having special knowledge or practical experience in literature, science, art, co-operative movement and social services.

The election in case of all the categories of electorates mentioned above shall be in accordance with the system of proportional representation with the single transferable vote. The constituencies in the case of the first three categories

namely the local bodies, the teachers and the graduates shall be such territorial constituencies as may by or under any law be made by Parliament. To be qualified, a candidate for election to a Legislative Council (*a*) must be a citizen of India, (*b*) must be not less than thirty years of age and (*c*) must possess such other qualifications as may be prescribed by the State Legislature. The same provisions regarding disqualification of members and vacation of their seats as have been mentioned above in connection with "the Legislative Assembly," will be applicable in case of the members of the Legislative Council.

The Legislative Council of a State shall choose two of its members to be the Chairman and the Deputy Chairman thereof.

The Constitution lays down the procedure for the creation or abolition of the Legislative Council. Parliament may make law for the abolition or creation (as the case may be) of the Legislative Council of a State if the Legislative Assembly of that State passes a resolution to that effect by a majority of its total membership and by not less than two-thirds majority of the members present and voting. Such law for the abolition or creation of the Legislative Council, it is provided, shall not be deemed to be an amendment of the constitution, that is, it will not require the procedure laid down for Constitutional amendments (see Chapter on 'Amendments').

Privileges and Immunities of Members –Subject to rules of procedure, there shall be freedom of speech in every State Legislature. No member shall be liable to any proceedings in a court for anything said or any vote given by him in the Legislature or any Committee thereof. Nor will he be so liable in respect of any publication by or under the authority of the Legislature. In other respects, the members' privileges and immunities till they are defined by the State Legislature

shall be such as are enjoyed by the members of the House of Commons of the Parliament of the United Kingdom at the commencement of this Constitution.

The members of every State Legislature shall receive such salaries and allowances as may from time to time be determined by the Legislature by law.

The Legislative Procedure—With the exeception of Money Bills and other financial Bills, a Bill can originate in either House of the Legislature. Subject to the provisions relating to Money Bills and to general restrictions on the powers of the Legislative Council (Art. 197, see below), a Bill shall not be deemed to have been passed by the Houses of the Legislature of a State having a Legislative Council unless it has been agreed to by both Houses either without amendment or with such amendments only as are agreed to by both Houses.

The Legislative Council has been given a subordinate position in law-making. Its powers have been greatly circumscribed both in respect of Money Bills and other Bills. Article 197 deals with the restrictions on the powers of a Legislative Council as regards Bills other than Money Bills. The power of a Legislative Council to amend a Bill which has been passed by the Legislative Assembly and sent to the Council is severely limited by it. The Article lays down that when such a Bill is (*a*) either rejected by the Legislative Council or (*b*) passed by it with amendments to which the Assembly does not agree or (*c*) more than three months elapse from the date on which the Bill is laid before the Council without the Bill being passed by it, the Legislative Assembly may again pass the Bill in the same or in any subsequent sessions with or without amendments suggested by the Council and then transmit the Bill as so passed to the Legislative Council. If now the Bill is rejected by the Council or passed by it with amendments to which the

Council does not agree or if more than one month elapse from the date on which the Bill is laid before the Council, without being passed by it, the Bill shall be deemed to have been passed by both Houses of Legislature of the State in the form in which it was passed by the Legislative Assembly with such amendments, if any, as have been agreed to by the Legislative Assembly.

The powers of a Legislative Council in relation to Money Bills are similar to those of the Council of States, the Upper House of Parliament. No Money Bill can be introduced in a Legislative Council. When a Money Bill is passed in a Legislative Assembly it is to be transmitted to the Legislative Council for its recommendations. If thereafter the Bill is not returned to the Assembly with the recommendations of the Council within a period of fourteen days from the date of the receipt of the Bill in the Council, the Bill shall be deemed to have been passed by both Houses. And if the Council returns the Bill within this period with its recommendations, the Assembly will have the authority to either accept or reject any of the recommendations. Then the Bill shall be deemed to have been passed by both Houses in the form in which it has been passed by the Legislative Assembly with or without any of the amendments recommended by the Council. The definition of Money Bills is similar to that given in connection with Parliament.

Article 199 states that a Bill shall be deemed to be a Money Bill if it contains only provisions dealing with all or any of the following matters:

(*a*) the imposition, abolition, remission, alteration or regulation of any tax;

(*b*) the regulation of the borrowing of money or the giving of any guarantee by the State, or the amendment of the law with respect to any

financial obligations undertaken or to be undertaken by the State;

(*c*) the custody of the Consolidated Fund or the Contingency Fund of the State, the payment of moneys into or the withdrawal of moneys from any such fund;

(*d*) the appropriation of moneys out of the Consolidated Fund of the State;

(*e*) the declaring of any expenditure to be expenditure charged on the Consolidated Fund of the State or increasing the amount of any such expenditure;

(*f*) the receipt of money on account of the Consolidated Fund of the State or the custody or issue of such money or the audit of the accounts of the State; or

(*g*) any matter incidental to any of the matters specified in items (*a*) to (*f*) of this clause.

It has been provided that a Bill shall not be deemed to be a Money Bill by reason only that it provides for the imposition of fines or other pecuniary penalties; or for the demand or payment of fees for licences or fees for services rendered; or for the imposition, abolition, remission alteration or regulation of any tax by any local authority or body for local purposes. If any question arises whether a Bill is a Money Bill or not, the decision of the Speaker of the Assembly on the matter shall be final.

When a Bill has been passed by the House or both Houses of the Legislature as the case may be, it shall be presented to the Governor. The Governor may then either assent to the Bill or withhold his assent from it or reserve the Bill for the President's consideration. It is provided that the Governor may return the Bill, if it is not a Money Bill, to the Legislature with his recommendations. The

Legislature may then again pass the Bill with or without any amendments and present it to the Governor. This time the Governor shall not withhold his assent from the Bill. When a Bill is reserved for the President's consideration, the President may, where the Bill is not a Money Bill, direct the Governor to return the Bill to the Legislature with recommendations. Thereafter the Legislature must reconsider the Bill within a period of six months and if it is passed again by it with or without any amendment, it shall be presented again to the President for his consideration.

The Financial Procedure —As in the case of the Centre, the main features of the financial procedure in the States are (*a*) the annual financial statement, (*b*) the demands for grants, (*c*) the appropriation Bills and (*d*) other Financial Bills.

In respect of every finacial year, the Governor must place before the House or Houses of the State Legislature an annual financial statement showing the estimated receipts and expenditure of the State for that year. The estimates of expenditure must show separately (*a*) the expenditure charged upon the Consolidated Fund of the State and (*b*) other expenditure to be made from that Fund. Clause (3) of Article 202 lays down that the following expenditure shall be expenditure charged upon the Consolidated Fund of the State: (*a*) the emoluments and allowances of the Governor and other expenditure relating to his office; (*b*) the salaries and allowances of the Speaker and the Deputy Speaker and in the case of a bicameral Legislature, also of the Chairman and the Deputy Chairman of the Council; (*c*) debt charges; (*d*) expenditure in respect of the salaries and allowances of the Judges of any High Court; (*e*) any sums required to satisfy any judgment decree or award of any court or arbitral tribunal; (*f*) any other expenditure declared by this Constitution or by the Legislature of the

State by law to be so charged. It may be noted that Articles 229, 291 & 322 declare the following sums also to be expenditure charged on the Consolidated Fund of the State:—(*i*) sums required to meet the administrative expenses of High Courts; (*ii*) sums required to meet such contributions to the privy purse of Rulers as may be determined by the President; (*iii*) sums necessary to meet the expenses of the State Public Service Commission. The expenditure charged on the Consolidated Fund, that is, the items (*a*) to (*f*), are non-votable but they can be discussed in the Legislature. Other expenditure must be submitted to the Legislative Assembly in the form of demands for grants. The Assembly can then either assent or refuse to assent to any demand or reduce the amount of any demand. No demand for grant can be made except on the recommendation of the Governor.

After the grants have been made, there shall be introduced a Bill to provide for the apropriation out of the Consolidated Fund of funds to meet the grants made by the Assembly as well as the expenditure charged on the Consolidated Fund. No amendment can be proposed at this stage by the House or the Houses of the Legislature, which may have the effect of varying the amounts or altering the destination of the amounts. No money can be withdrawn from the Consolidated Fund except in accordance with the provisions of the Appropriation Act.

The Governor has been authorised, whenever he will think it necessary, to place before the House or the Houses of the State Legislature supplementary financial statements and cause to be laid before the Assembly demands for supplementary or additional or excess grants. But the same procedure will apply to these matters as has been laid down for the annual financial statement or the ordinary demands for grants.

The Legislative Assemblies of the States have been authorised to sanction advance grants as well as exceptional grants.

Conduct of Business —All questions, except those otherwise provided for by the constitution, shall be determined in any sitting of a House by a majority of votes of the members present and voting. This rule will also apply to joint sittings of the two Houses. The quorum shall be ten members or one-tenth of the total number of members of a House, whichever is greater. The Speaker or Chairman shall not vote in the first instance but will have a casting vote.

Subject to these and some other provisions, a House of the Legislature of a State may make rules for its procedure and conduct of business. The Governor of a State has been authorised to make, after consultation with the Speaker of the Assembly and the Chairman of the Council, rules of procedure in respect of joint sittings of, and communications between, the two Houses. At a joint sitting it is the Speaker of the Assembly who shall preside and in his absence such other persons as may be determined by the rules of procedure.

No discussion shall take place in the Legislature of a State with respect to the conduct of any Judge of a High Court or the Supreme Court in the discharge of his duties. The validity of any proceedings in the Legislature of a State shall not be called in question in any court.

As regards the language to be used in the Legislatures of States, Article 210 lays down that the business in such Legislatures shall be transacted in the official language or languages of the State or in Hindi or in English. The Speaker may, however, authorise a member who cannot adequately express himself in any of these languages, to address the House in his mother-tongue. At the expiration of fifteen years from the commencement of the Constitution,

unless the State Legislature otherwise provides, English shall cease to be one of authorised languages so far as business of the Legislature is concerned. [As regards the language to be used in Bills etc., Article 348 deals with the matter, for which see Chap. on Official Language].

COMMENTS AND CRITICISM

Limitations on the Powers of State Legislatures —Though the State Legislatures will be generally sovereign in their own spheres, it is important to remember the following limitations on their powers even within their own spheres.

(*a*) Some State laws will be invalid unless having been reserved for the President's consideration they have received his assent. In this category will fall—(*i*) laws relating to acquisition of property by the State (Article 31); (*ii*) laws in respect of concurrent matters which are repugnant to earlier legislations of Parliament (Art. 254); (*iii*) laws providing for the imposition of taxes on the sale or purchase of commodities declared by Parliament to be essential for the life of the community (Art. 286).

(*b*) Some Bills will require the previous sanction of the President for their introduction in the State Legislature. In this category will fall Bills seeking to impose restrictions, in the public interest, on the freedom of trade, commerce or inter-course with or within that State (Art. 304).

(*c*) Parliament will have power to legislate on those matters in the State List which may be declared by a resolution passed by a two-thirds majority in the Council of State to be matters which

should be regulated by Parliamentary law. Such Central laws will, however, have effect for a limited period. (Art. 249; See Chapter XVIII).

(*d*) When a Proclamation of Emergency is in operation Parliament will have paramount power to legislate on State subjects.

(*e*) By a Proclamation of failure of constitutional machinery in the State, the President may take away all the powers of the State Legislature and vest them in Parliament.

Control over Finance etc. –As is natural, it is the Legislative Assemblies of States that have been given the controlling power over the State finances. The control of the Council in such matters will be practically nil. In other legislation also, the Second Chamber has been given a very subordinate place and the Lower House can, if it so desires, entirely ignore the Upper House and can even pass a legislation alone. Moreover, the Lower House has been given the power to cause the abolition of the Upper House by passing a resolution to that effect by a two-thirds majority. In view of these provisions, some people feel that it has been entirely meaningless to have made the provision for the Upper House which, they argue, will have very little power and usefulness but will place a heavy permanent burden on the State finances.

The Problem of the Upper House –The problem of the Second Chamber has ever been the subject of much controversy. There have been critics of the Second Chamber who have denied that a Second Chamber can have any utility at all. One such critic pointed out that either a Second Chamber agreed with the First in which case it was superfluous or it disagreed with the First in which case it was a nuisance.

But to put the matter in this way is to over-simplify it. It may be rightly argued that a Second Chamber may have functions other than mere agreeing or disagreeing with the First. Such a Chamber may be greatly helpful in preventing hasty legislation. Among the functions which a Second Chamber is expected to perform are the following: revision and examination of Bills brought from the Lower House, initiation of Bills of a non-controversial character and interposition of such delay in the passing of a Bill as may enable public opinion to express itself adequately on it.

Now, in the States for which bi-cameral Legislatures have been provided for, the Upper House will be expected to perform these functions. It may be hoped also that as the Upper House will have experts among its members, discussions in that House will prove very valuable.

On the other hand there is much force in the argument that the existence of the Upper House may very often cause much unnecessary delay in the passing of Bills and that the Upper House will mean a huge burden on State exchequer.

It is obvious that a large section of public opinion in the country regards the Upper House as superfluous if not worse. The fact that some of the states, such as, Orissa, Madhya Pradesh (C.P.) and Assam decided against having an Upper House in their Legislatures goes to show the strength of public feeling in these States on this question. Also, the provision for the abolition of the Council shows that the Constituent Assembly itself was doubtful about its utility.

However, it is the actual working of the Upper Houses under the new Constitution that will finally decide the question of their utility or otherwise. If the experience of the working of the Government of India Act, 1935 is any guide in this matter, one cannot but feel pessimistic about their usefulness.

CHAPTER XVI

THE STATES IN PART B OF THE FIRST SCHEDULE

An historic achievement of the Government of free India is the integration and the democratisation of the former Indian States. Most of the hundreds of Indian States that were formerly under a feudal system of princely rule were, within a period of two years after the attainment of freedom, either merged into the provinces or integrated into bigger Unions. A few of them were, however, allowed to maintain their separate identity. The internal administration was placed everywhere on a democratic basis. Power was transferred from the princes to the people. All these Unions of the former Indian States with the exception of Himachal Pradesh and three big individual States have been placed in Part B of the First Schedule to the Constitution. (Vindhya Pradesh has since been made a Chief Commissioner's State, that is, a Centrally-administered State.) There are altogether 9 states in this Part of the Schedule. They are:—(1) Hyderabad, (2) Jammu and Kashmir, (3) Madhya Bharat, (4) Mysore, (5) Patiala and East Punjab States Union, (6) Rajasthan, (7) Saurastra, (8) Travancore-Cochin, (9) Vindhya Pradesh. Of these, with the exception of Mysore, Hyderabad, Jammu and Kashmir, all the others are Unions of former Indian States.

The Government of the States—The Constitution places all the States in part B of the First Schedule on a par with the former Indian provinces which have been placed in Part A of the First Schedule. All the provisions relating to the Executive, the Legislative and the Judicial Organs in the States in Part A of the First Schedule are to apply to the States in Part B with only some minor exceptions.

The Executive—The Executive in the States in Part B in the First Schedule will be almost exactly similar to that of the States of Part A of the Schedule. Only in the place of the Governor, there will be a Rajpramukh in each of the States. The Rajpramukh of Hyderabad will be the person who is for the time being recognised by the President as the Nizam of Hyderabad. The Rajpramukh of Mysore or Jammu and Kashmir will be the person who for the time being is recognised by the President as the Maharaja of that State. In relation to any other State, the Rajpramukh will be the person who for the time being is recognised by the President as the Rajpramukh of that State. The Rajpramukh will receive some allowances which will be charged upon the Consolidated Fund of the State.

The Legislature —There will be a legislature in each of these States consisting of the Rajpramukh and (*a*) in the State of Mysore two Houses, (*b*) in other States one House.

In other respects, the provisions which apply to the Legislature of the States in Part A of the First Schedule will apply to these States.

The Judiciary —The Judiciary in these States will also be similar to that in States specified in Part A of the First Schedule and the same provisions will apply. (See the Chapter on High Courts etc.) The only difference relate to a minor matter, namely the salary and allowances etc. of the High Court Judges. The salaries of the High Court Judges in these States will be fixed by the President—after consultation with Rajpramukh. The salaries of the High Court Judges in States specified in Part A of the First Schedule have been fixed by the Constitution. The allowances, rights in respect of leave, pension etc. of the Judges in these States are to be determined by Parliament by law and until so determined will be such as may be

fixed by the President after consultation with the Rajpramukh.

Relations to the Centre—The relations to the Centre of the States in Part B of the First Schedule will be almost the same as those of States in Part A of the First Schedule. As regards the legislative relations, they, too, will have the exclusive power to legislate on matters enumerated in the State List (See Chapter on Distribution of Legislative Powers) and will have power, concurently with the Union, to legislate on matters enumerated in the Concurrent List (See the same Chapter), Central legislation being paramount. (These matters have been dealt with at length in Chapter XVIII). An exception to this general rule has, however, been made in the case of the State of Jammu and Kashmir. With regard to this State, Parliament's power to legislate will be confined to (*a*) those matters in the Union List and the Concurrent List as were ceded to the Centre by the Instrument of Accession of the State and (*b*) such other matters as the President may, with the concurrence of the State Government, by order specify. These latter matters must be placed before the Constituent Assembly of the State, when convened, for its decision. The President may, on the recommendation of the Constituent Assembly, at any time declare that these exceptional provisions will cease to have effect or will remain operative only with such exceptions as he may specify.

So far as the administrative relations with the Centre are concerned these States, unlike the States in Part A of the First Schedule, will be, for a period of ten years from the commencement of the Constitution, under the general control of the Union and their Governments must comply with such particular directions as may from time to time be given by the President. Parliament, however, has been empowered to lengthen or shorten this period in respect

of any State and the President has been authorised to exempt any State from the application of this provision regarding Centre's general control.

In financial matters, provision has been made for special agreements between the Centre and the Government of any these States but these agreements cannot continue in force for a period exceeding ten years from the commencement of this Constitution. (See Chapter on 'Financial Provisions').

CHAPTER XVII

CENTRALLY-ADMINISTERED AREAS

The States in Part C of the First Schedule—The States in Part C of the First Schedule are the following:—Ajmer, Bhopal, Bilaspur, Cooch-Behar, Coorg, Delhi, Himachal Pradesh, Kutch, Manipur and Tripura. These are to be Centrally-administered States. (Cooch-Behar has since been merged in West Bengal and Vindhya Pradesh made a Chief Commissioner's State).

The Constitution lays down that the President shall administer these States. In administering them, the President may, however, act through a Chief Commissioner or Lieutenant-Governor to be appointed by him or through the Government of a neighbouring State. But if the President wants to administer any such State through the Government of a neighbouring State, he must first consult the Government concerned and also ascertain the views of the people of the State concerned in such manner as he thinks most appropriate.

Parliament has been authorised to create or continue by law local legislatures for the States that are administered through a Chief Commissioner or a Lieutenant Governor.

and specify their functions, powers and constitution. Such bodies may either be nominated or elected or partly nominated and partly elected.

Parliament has also been authorised to create or continue for each of such States a Council of Advisers or Ministers.

As regards the Judiciary in these States Parliament has been empowered to create High Courts for them or declare any existing courts as High Courts for any of the States. The same provisions which apply to the High Courts in the States specified in Part A of the First Schedule will apply to them.

It has been provided that every High Court which was exercising jurisdiction in relation to any of these States immediately before the commencement of the Constitution shall continue to do so after its commencement.

Until Parliament otherwise provides the powers, functions and constitution of the Coorg Legislative Council shall be the same as immediately before the commencement of the Constitution. And until otherwise provided by the President by order, the arrangements with respect to the revenue collections in Coorg will remain unchanged.

The territories in Part D of the First Schedule and other territories not specified in the Schedule—

The territories mentioned in Part D of the First Schedule are the Andaman and Nicobar Islands. These territories and any other territory not mentioned in the First Schedule are to be administered by the President acting, to the extent he thinks fit, through a Chief Commissioner or any other authority to be appointed by him. The President has been empowered to make regulations for the peace and good government of these territories and to amend or repeal any law made by Parliament or any existing law which is applicable to such territory.

CHAPTER XVIII

DISTRIBUTION OF LEGISLATIVE POWER

In every federal government there is clear demarcation between the sphere of the Centre and that of the Units. In other words, there is division of legislative power between the Centre and the units. In India, too, the new Constitution has divided the legislative powers between the Union and the States.

Generally speaking, there are two ways of dividing the powers between the federal government and the States. The federal government may be given a number of specified powers and the rest may be vested in the States. This scheme is followed in the American and the Australian Constitutions. Secondly, the States may be given a number of specified powers and the rest of the legislative field may be left to the Centre. This scheme is followed in the Canadian Constitution.

In India, the division of legislative powers will be more or less of the Canadian type. But there are some novel features of our Constitution in this matter. Our Constitution embodies three Legislative lists, namely, the Union List, the State List and the Concurrent List (There Lists are given at the end of the chapter). As laid down by Article 246, Parliament will have exclusive power to make laws in respect of the matters enumerated in the Union List. The Legislatures of States for the time being specified in Part A and B of the First Schedule will have exclusive power to make laws for such States or any part thereof with respect to any of the matters enumerated in the State List. In respect of matters enumerated in the Concurrent List, both Parliament and the Legislatures of any of the States specified in Part A and B of the First Schedule will have authority to legislate.

For territories not included in the States specified in Parts A and B of the First Schedule, Parliament will have authority to legislate on any matter whatsoever. The residual powers of legislation will be vested in the Centre, that is, in Parliament. In case of inconsistency between the laws made by Parliament and those made by the State Legislatures, it is the former which will prevail and the State laws will, to the extent of the inconsistency, be void. It is provided that in respect of matters enumerated in the Concurrent List a law made by the Legislature of any of the States specified in Parts A and B and of the First Schedule shall, in spite of its inconsistency with any earlier law made by Parliament, prevail, if the State law in question has been reserved for the consideration of the President and received his assent. Parliament can, however, at any time enact a law repealing or amending such a State law. Apart from these general provisions, the Constitution has also provided for the acquisition of power by Parliament to legislate on such matters in the State List as assume national importance and also for the voluntary surrender to the Centre by one or more States of any subject falling within their legislative ambit.

Article 249 lays down that if the Council of States passes a resolution by a majority of two-thirds of the members present and voting declaring that it is necessary in the national interest that Parliament should make laws with respect to any matter in the State List Parliament shall have the authority to legislate on that matter while the resolution remains in force. Such a resoluion shall remain in force for a period not exceeding one year. This period may be extended by further periods of one year at a time by subsequent resolutions. A law made by Parliament under this Article shall cease to have effect at the expiration of a period of six months after the resolution has ceased to be in force.

It must be understood that the authority of Parliament to legislate on a matter in the State List shall not take away the power of a State to legislate on it, but in the case of inconsistency between the Federal law and any State law on such a matter, it is the former which will prevail.

According to Article 252, if all the Houses of the Legislatures of two or more State pass resolutions requiring Parliament to regulate any matter falling exclusively within their legislative ambit, Parliament may pass an Act to regulate such matter in the States concerned. Such an Act may be adopted by any other State if a resolution in that behalf is passed by the House or Houses of the Legislature of that State. Such an Act can only be amended or repealed by Parliament.

As has been mentioned in Chapter X, when a Proclamation of Emergency is in operation Parliament shall have the authority to make laws for the whole or any part of India on any of the matters in the State List. Such laws shall cease to have effect at the expiration of six months after the Proclamation has ceased to operate. But, again, it must be understood that this power of Parliament does not take away the power of the States to legislate on any matter within their jurisdiction, but in the case of inconsistency between the federal law and the State law, it is the former which is to prevail.

COMMENTS

Each Sovereign In Its Sphere —It is clear that subject to the provisions of the Constitution, both the Union and the States (of Part A and B of the First Schedule) are sovereign in their respective spheres. Parliament cannot encroach on the legislative territory of the State, nor can the States encroach on the federal sphere. If either of the two tries to intrude on the other's sphere, the Judiciary will have the

authority to prevent it from doing so. If any federal law, in violation of the Constitution, seeks to regulate any matter reserved to the States, the Judiciary will have power to declare it unconstitutional and void. Similarly, the States will be kept within their own sphere by the Judiciary and will not be allowed to usurp any part of the territory reserved to the Union. Thus, according to the scheme of the Constitution both the Union and the States are expected "to whirl contentedly" within their respective orbits. It must be clearly understood, however, that this relationship will subsist only between the Union and the States specified in Parts A and B of the First Schedule. As regards other States and territories, Parliament will have full authority to legislate on any matter notwithstanding that such a matter is one enumerated in the State List.

(2) **Comparison with other Federal Constitutions**—From the point of view of division of powers three points of difference stand out between our Constitution and other federal constitutions of the world.

(*a*) Firstly, the centralisation of power in our Constitution is far greater than in any other constitution of the world. The Union has been made so powerful that, it has been complained, the States have become merely so many "glorified corporations". Allowing for the exaggeration in this criticism, it has to be admitted that Centre dominates the scene like a colossus with its formidable list of 97 exclusive powers, to which must be added its concurrent but paramount powers, as well as the residual powers of legislation which, too, have been vested in it. When it is remembered that, apart from these powers, the Union has been given very wide emergency powers, it seems that unless the people are able to exercise effective control on the Government, the States may be reduced to impotence

and a totalitarian system may grow in the country. These emergency powers constitute the second point of difference between our Constitution and other federal constitutions.

(*b*) The Emergency provisions (see Chap. X) constitute a unique feature of our Constitution. Similar provisions exist in no other Constitution of the world. They are so to say a machinery by which the federal Constitution can be turned into a unitary one in times of emergency. Obviously, it was felt by the framers of the Constitution that a federal system of Government cannot work with sufficient efficiency in times of emergency. But these provisions make our federal system fundamentally different in character from the systems prevalent in either the U.S.A. or the Australian Commonwealth.

(*c*) Thirdly, the enumeration of subjects in our Constitution is far more detailed than in any other constitution of the world. This may be helpful in avoiding too frequent conflicts of jurisdiction between the Union and the States.

Let us briefly glance at other federal constitutions of the world to see how distribution of power has been made in them.

Let us take the constitution of the U.S.A. first. In the U.S.A., the States combined to form the federation and delegated some of their powers to the federal legislature, that is, Congress. These powers were specified in the Constitution and the rest of the powers were left to the States. Both Congress and the State Legislatures are sovereign in their own respective spheres. Neither of them can encroach on the other's territory. The powers of Congress are fewer and far more limited that those of Parliament under our Constitution, and unlike in India, the residual powers of legislation in the U.S.A. are vested in the States. The most important powers of Congress have been enumerated

in Section 8 of Article 1 of the Constitution. This section contains 18 items but besides these there are some other powers of Congress which are mentioned elsewhere in the Constitution. In some matters, such as taxation, Congress and the State Legislatures enjoy concurrent powers of legislation, but in case of inconsistency between the federal and the State laws the former prevail. It may be mentioned that through a system of judicial interpretation Congress has come to possess and wield far greater powers than the framers of the Constitution intended to confer on it.

Coming to the Australian Constitution which is also a federal one, we find that the central legislature, Parliament, has been given very few exclusive powers of legislation by the Constitution. That is because the federating states were very jealous of fully surrendering any of their powers to the federal Government. To-day, the Parliament of the Australian Commonwealth possesses exclusive powers of legislation only on the following subjects:—(1) the seat of federal Government, (2) the public services of the Commonwealth; (3) duties of customs and excise and export bounties; (4) naval and military forces; (5) coinage and legal tender; (6) some incidental powers of constitutional amendment. Over a comparatively large field, the Commonwealth Parliament, however, possesses concurrent powers of legislation with the State Legislatures and it is provided that in case of inconsistency between a State law and a Commonwealth law, the latter shall prevail. Thus in Australia unlike in India, the Centre is a weak one and the residual powers of legislation are vested in the States. The States in Australia can, moreover, amend their constitutions within the federal frame-work, but in India the States will enjoy no such constituent powers. Both Parliament and the State Legislatures in Australia are sovereign in their respective spheres.

In Canada, specified powers have been given to the provinces while the rest of the legislative field has been left to the Centre. The scheme of distribution of powers in Canada is thus different from that followed in the U.S.A. and Australia and, more or less, similar to that in India. In Canada, however, there are two concurrent subjects, namely agriculture and immigration, whereas in the Indian Constitution there are 47 concurrent subjects. The Centre in Canada is a strong one and enjoys the residuary powers. Moreover, the Governor-General in Council has the power to disallow provincial legislation even within the provincial field. Neither in Australia, nor in the U.S.A., has the Central Government such power of interference with the provincial legislation. Though the Constitution of India does not provide for direct interference of the Centre with the State laws, it lays down that certain kinds of State laws will be invalid unless, having been reserved for the President's consideration, they have received his assent. Some Bills will require the previous sanction of the President for their introduction into the State Legislature.

It is sometimes mistakenly thought that the Constitution of the Union of South Africa is also federal in type but it is not so. There is no divisions of powers in South Africa in the true sense of the term. There is, instead, provincial devolution. That is, some specified powers have been delegated to the Provinces but the Union Parliament retains full authority over the whole domain of legislation. Parliament can repeal any Provincial ordinance directly or indirectly. There can be no question in South Africa of any conflict of legislative jurisdiction between the Union and the States. The Union Parliament's authority in the legislative field is supreme and unchallengeable.

It is said that "the essence of federalism is a division of powers between a central and local legislature that the central legislature has no power to alter." Judged by this test the Constitutions of the U.S.A., Canada and Australia are certainly federal. And by this test the Indian Constitution, too, is federal. For though in times of emergency Parliament will have authority to legislate on State subjects and though it will be able to make laws on any of these subjects if they are declared to have assumed national importance by the Council of States, still it will have no power to change the division of powers in relation to the States specified in Parts A and B of the First Schedule. Parliament cannot, it should be noted, amend the legislative lists without the assent of at least half the Legislature of such States.

But so far as the States specified in Part C of the Schedule are concerned there is no division of powers between Parliament and the State Legislatures, Parliament being supreme over the whole legislative field. In the territories specified in Part D, there will be no legislatures. But these Centrally-administered areas constitute a very small part of the vast total area of the country.

The Legislative Lists

List I—Union List

1. Defence of India and every part thereof including preparation for defence and all such acts as may be conducive in times of war to its prosecution and after its termination to effective demobilisation.

2. Naval, military and air forces; any other armed forces of the Union.

3. Delimitation of cantonment areas, local self-government in such areas, the constitution and powers within such areas of cantonment authorities and the

regulation of house accommodation (including the control of rents) in such areas.

4. Naval, military and air force works.

5. Arms, firearms, ammunition and explosives.

6. Atomic energy and mineral resources necessary for its production.

7. Industries declared by Parliament by law to be necessary for the purpose of defence or for the prosecution of war.

8. Central Bureau of Intelligence and Investigation.

9. Preventive detention for reasons connected with Defence, Foreign Affairs, or the security of India; persons subjected to such detention.

10. Foreign Affairs; all matters which bring the Union into relation with any foreign country.

11. Diplomatic, consular and trade representation.

12. United Nations Organisation.

13. Participation in international conferences, associations and other bodies and implementing of decisions made thereat.

14. Entering into treaties and agreements with foreign countries and the implementing of treaties, agreements and conventions with foreign countries.

15. War and peace.

16. Foreign jurisdiction.

17. Citizenship, naturalisation and aliens.

18. Extradition.

19. Admission into, and emigration and expulsion from, India; passports and visas.

20. Pilgrimages to places outside India.

21. Piracies and crimes committed on the high seas or in the air; offences against the law of nations committed on land or the high seas or in the air.

22. Railways.

23. Highways declared by or under law made by Parliament to be national highways.

24. Shipping and navigation on inland waterways, declared by Parliament by law to be national waterways, as regards mechanically propelled vessels; the rule of the road on such waterways.

25. Maritime shipping and navigation, including shipping and navigation on tidal waters; provision of education and training for the mercantile marine and regulation of such education and training provided by States and other agencies.

26. Lighthouses, including lightships, beacons and other provision for the safety of shipping and aircraft.

27. Ports declared by or under law made by Parliament or existing law to be major ports, including their delimitation, and the constitution and powers of port authorities therein.

28. Port quarantine, including hospitals connected therewith; seamen's and marine hospitals.

29. Airways; aircraft and air navigation; provision of aerodromes; regulation and organisation of air traffic and of aerodromes; provision for aeronautical education and training and regulation of such education and training provided by States and other agencies.

30. Carriage of passengers and goods by railway, sea or air, or by national waterways in mechanically propelled vessels.

31. Posts and telegraphs; telephones, wireless, broadcasting and other like forms of communication.

32. Property of the Union and the revenue therefrom, but as regards property situated in a State specified in Part A or Part B of the First Schedule subject to legislation by the State, save in so far as Parliament by law otherwise provides.

33. Acquisition or requisitioning of property for the purposes of the Union.

34. Courts of wards for the estates of Rulers of Indian States.

35. Public debt of the Union.

36. Currency, coinage and legal tender; foreign exchange.

37. Foreign loans.

38. Reserve Bank of India.

39. Post Office Savings Bank.

40. Lotteries organised by the Government of India or the Government of a State.

41. Trade and commerce with foreign countries; import and export across customs frontiers; definition of customs frontiers.

42. Inter-State trade and commerce.

43. Incorporation, regulation and winding up of trading corporations, including banking, insurance and financial corporations but not including co-operative societies.

44. Incorporation, regulation and winding up of corporations, whether trading or not, with objects not confined to one State, but not including universities.

45. Banking.

46. Bills of exchange, cheques, promissory notes and other like instruments.

47. Insurance.

48. Stock exchanges and futures market.

49. Patents, inventions and designs; copyright; trade-marks and merchandise marks.

50. Establishment of standards of weight and measure.

51. Establishment of standards of quality for goods to be exported out of India or transported from one State to another.

52. Industries, the control of which by the Union is declared by Parliament by law to be expedient in the public interest.

53. Regulation and development of oilfields and mineral oil resources; petroleum and petroleum products; other liquids and substances declared by Parliament by law to be dangerously inflammable.

54. Regulation of mines and mineral development to the extent to which such regulation and development under the control of the Union is declared by Parliament by law to be expedient in the public interest.

55. Regulation of labour and safety in mines and oilfields.

56. Regulation and development of inter-State rivers and river valleys to the extent to which such regulation and development under the control of the Union is declared by Parliament by law to be expedient in the public interest.

57. Fishing and fisheries beyond territorial waters.

58. Manufacture, supply and distribution of salt by Union agencies; regulation and control of manufacture, supply and distribution of salt by other agencies.

59. Cultivation, manufacture, and sale for export, of opium.

60. Sanctioning of cinematograph films for exhibition.

61. Industrial disputes concerning Union employees.

62. The institutions known at the commencement of this Constitution as the National Library, the Indian Museum, the Imperial War Museum, the Victoria Memorial and the Indian War Memorial, and any other like institution financed by the Government of India wholly or in part

and declared by Parliament by law to be an institution of national importance.

63. The institutions known at the commencement of this Constitution as the Benares Hindu University, the Aligrah Muslim University and the Delhi University, and any other institution declared by Parliament by law to be an institution of national importance.

64. Institutions for scientific or technical education financed by the Government of India wholly or in part and declared by Parliament by law to be institutions of national importance.

65. Union agencies and institutions for—

(*a*) professional, vocational or technical training, including the training of police officers; or

(*b*) the promotion of special studies or research; or

(*c*) scientific or technical assistance in the investigation or detection of crime.

66. Co-ordination and determination of standards in institutions for higher education or research and scientific and technical institutions.

67. Ancient and historical monuments and records declared by Parliament by law to be of national importance.

68. The Survey of India, the Geological, Botanical, Zoological and Anthropological Surveys of India; Meteorological organisations.

69. Census.

70. Union public services; all-India services; Union Public Service Commission.

71. Union pensions, that is to say, pensions payable by the Government of India or out of the Consolidated Fund of India.

72. Elections to Parliament, to the Legislatures of States and to the offices of President and Vice-President; the Election Commission.

73. Salaries and allowances of members of Parliament, the Chairman and Deputy Chairman of the Council of States and the Speaker and Deputy Speaker of the House of the People.

74. Powers, privileges and immunities of each House of Parliament and of the members and the committees of each House; enforcement of attendance of persons for giving evidence or producing documents before committees of Parliament or commissions appointed by Parliament.

75. Emoluments, allowances, and rights in respect of leaves of absence, of the President and Governors; salaries and allowances of Ministers for the Union; the salaries, allowances and rights in respect of leaves of absence and other conditions of service of the Comptroller and Auditor-General.

76. Audit of the accounts of the Union and of the States.

77. Constitution, organisation, jurisdiction and powers of the Supreme Court (including contempt of such Court), and the fees taken therein; persons entitled to practise before the Supreme Court.

78. Constitution and organisation of the High Courts except provisions as to officers and servants of High Courts; persons entitled to practise before the High Courts.

79. Extension of the jurisdiction of a High Court having its principal seat in any State to, and exclusion of the jurisdiction of any such High Court from, any area outside that State.

80. Extension of the powers and jurisdiction of members of a police force belonging to any State to any area outside that State, but not so as to enable the police of one State to exercise powers and jurisdiction in any area outside that State without the consent of the Government of the State in which such area is situated; extension of the

powers and jurisdiction of members of a police force belonging to any State to railway areas outside that State.

81. Inter-State migration; inter-State quarantine.

82. Taxes on income other than agricultural income.

83. Duties of customs including export duties.

84. Duties of excise on tobacco and other goods manufactured or produced in India except—

(*a*) alcoholic liquors for human consumption;

(*b*) opium, Indian hemp and other narcotic drugs and narcotics,

but including medicinal and toilet preparations containing alcohol or any substance included in sub-paragraph (*b*) of this entry.

85. Corporation tax.

86. Taxes on the capital value of the assets, exclusive of agricultural land, of individuals and companies; taxes on the capital of companies.

87. Estate duty in respect of property other than agricultural land.

88. Duties in respect of succession to property other than agricultural land.

89. Terminal taxes on goods or passengers, carried by railways, sea or air; taxes on railway fares and freights.

90. Taxes other than stamp duties on transactions in stock exchanges and futures markets.

91. Rates of stamp duty in respect of bills of exchange, cheques, promissory notes, bills of lading, letters of credit, policies of insurance, transfer of shares, debentures, proxies and receipts.

92. Taxes on the sale or purchase of newspapers and on advertisements published therein.

93. Offences against laws with respect to any of the matters in this List.

94. Inquiries, surveys and statistics for the purpose of any of the matters in this List.

95. Judisdiction and powers of all courts, other than the Supreme Court, with respect to any of the matters in this List; admiralty jurisdiction.

96. Fees in respect of any of the matters in this List, but not including fees taken in any court.

97. Any other matter not enumerated in List II or List III including any tax not mentioned in either of those Lists.

List II—State List

1. Public order (but not including the use of naval, military or air forces or any other armed forces of the Union in aid of the civil power).

2. Police, including railway and village police.

3. Administration of justice; constitution and organisation of all courts, except the Supreme Court and the High Court; procedure in rent and revenue courts; officers and servants of the High Court; fees taken in all courts except the Supreme Court.

4. Prisons, reformatories, Borstal institutions and other institutions of a like nature, and persons detained therein; arrangements with other States for the use of prisons and other institutions.

5. Local government, that is to say, the constitution and powers of municipal corporations, improvement trusts, district boards, mining settlement authorities and other local authorities for the purpose of local self-government or village administration.

6. Public health and sanitation; hospitals and dispensaries.

7. Pilgrimages, other than pilgrimages to places outside India.

8. Intoxicating liquors, that is to say, the production, manufacture, possession, transport, purchase and sale of intoxicating liquors.

9. Relief of the disabled and unemployable.

10. Burials and burial grounds; cremations and cremation grounds.

11. Education including universities, subject to the provisions of entries 63, 64, 65 and 66 of List I and entry 25 of List III.

12. Libraries, museums and other similar institutions controlled or financed by the State; ancient and historical monuments and records other than those declared by Parliament by law to be of national importance.

13. Communications, that is to say, roads, bridges, ferries, and other means of communication not specified in List I; municipal tramways; ropeways; inland waterways and traffic thereon subject to the provisions of List I and List III with regard to such waterways; vehicles other than mechanically propelled vehicles.

14. Agriculture, including agricultural education and research, protection against pests and prevention of plant diseases.

15. Preservation, protection and improvement of stock and prevention of animal diseases; veterinary training and practice.

16. Pounds and the prevention of cattle trespass.

17. Water, that is to say, water supplies, irrigation and canals, drainage and embankments, water storage and water power subject to the provisions of entry 56 of List I.

18. Land, that is to say, rights in or over land, land tenures including the relation of land-lord and tenant, and the collection of rents; transfer and alienation of agricultural land; land imporvement and agricultural loans; colonization.

19. Forests.

20. Protection of wild animals and birds.

21. Fisheries.

22. Courts of wards subject to the provisions of entry 34 of List I; encumbered and attached estates.

23. Regulation of mines and mineral development subject to the provisions of List I with respect to regulation and development under the control of the Union.

24. Industries subject to the provisions of entry 52 of List I.

25. Gas and gas-works.

26. Trade and commerce within the State subject to the provisions of entry 33 of List III.

27. Production, supply and distribution of goods subject to the provisions of entry 33 of List III.

28. Markets and fairs.

29. Weights and measures except establishment of standards.

30. Money-lending and money-lenders; relief of agricultural indebtedness.

31. Inns and inn-keepers.

32. Incorporation, regulation and winding up of corporations, other than those specified in List I, and universities; unincorporated trading, literary, scientific, religious and other societies and associations; co-operative societies.

33. Theatres and dramatic performances; cinemas subject to the provisions of entry 60 of List I; sports, entertainments and amusements.

34. Betting and gambling.

35. Works, land and buildings vested in or in the possession of the State.

36. Acquisition or requisitioning of property, except for the purposes of the Union, subject to the provisions of entry 42 of List III.

37. Elections to the Legislature of the State subject to the provisions of any law made by Parliament.

38. Salaries and allowances of members of the Legislature of the State, of the Speaker and Deputy Speaker of the Legislative Assembly, and if there is a Legislative Council of the Chairman and Deputy Chairman thereof.

39. Powers, privileges and immunities of the Legislative Assembly and of the members and the committees thereof, and, if there is a Legislative Council, of that Council and of the members and the committees thereof; enforcement of attendance of persons for giving evidence or producing documents before committees of the Legislature of the State.

40. Salaries and allowances of Ministers for the State.

41. State public services; State Public Service Commission.

42. State pensions, that is to say, pensions payable by the State or out of the Consolidated Fund of the State.

43. Public debt of the State.

44. Treasure trove.

45. Land revenue, including the assessment and collection of revenue, the maintenance of land records, survey for revenue purposes and records of rights, and alienation of revenues.

46. Taxes on agricultural income.

47. Duties in respect of succession to agricultural land.

48. Estate duty in respect of agricultural land.

49. Taxes on lands and buildings.

50. Taxes on mineral rights subject to any limitations imposed by Parliament by law relating to mineral development.

51. Duties of excise on the following goods manufactured or produced in the State and countervailing duties

at the same or lower rates on similar goods manufactured or produced elsewhere in India:—

(*a*) alcoholic liquors for human consumption;

(*b*) opium, Indian hemp and other narcotic drugs and narcotics;

but not including medicinal and toilet preparations containing alcohol or any substance included in sub-paragraph (*b*) of this entry.

52. Taxes on the entry of goods into a local area for consumption, use or sale therein.

53. Taxes on the consumption or sale of electricity.

54. Taxes on the sale or purchase of goods other than newspapers.

55. Taxes on advertisements other than advertisements published in the newspapers.

56. Taxes on goods and passengers carried by road or on inland waterways.

57. Taxes on vehicles, whether mechanically propelled or not, suitable for use on road, including tramcars subject to the provisions of entry 35 of List III.

58. Taxes on animals and boats.

59. Tolls.

60. Taxes on professions, trades, callings and employments.

61. Capitation taxes.

62. Taxes on luxuries, including taxes on entertainments, amusements, betting and gambling.

63. Rates of stamp duty in respect of documents other than those specified in the provisions of List I with regard to rates of stamp duty.

64. Offences against laws with respect to any of the matters in this List.

65. Jurisdiction and powers of all courts, except the Supreme Court, with respect to any of the matters in this List.

66. Fees in respect of any of the matters in this List, but not including fees taken in any court.

List III—Concurrent List

1. Criminal law, including all matters included in the Indian Penal Code at the commencement of this Constitution but excluding offences against laws with respect to any of the matters specified in List I or List II and excluding the use of naval, military or air forces or any other armed forces of the Union in aid of the civil power.

2. Criminal procedure, including all matters included in the Code of Criminal Procedure at the commencement of this Constitution.

3. Preventive detention for reasons connected with the security of a State, the maintenance of public order, or the maintenance of supplies and services essential to the community; persons subjected to such detention.

4. Removal from one State to another State of prisoners, accused persons and persons subjected to preventive detention for reasons specified in entry 3 of this List.

5. Marriage and divorce; infants and minors; adoption; wills, intestacy and succession; joint family and partition; all matters in respect of which parties in judicial proceedings were immediately before the commencement of this Constitution subject to their personal law.

6. Transfer of property other than agricultural land; registration of deeds and documents.

7. Contracts, including partnership, agency, contracts of carriage, and other special forms of contracts, but not including contracts relating to agricultural land.

8. Actionable wrongs.

9. Bankruptcy and insolvency.

10. Trust and Trustees.

11. Administrators-general and official trustees.

12. Evidence and oaths; recognition of laws, public acts and records, and judicial proceedings.

13. Civil procedure, including all matters included in the Code of Civil Procedure at the commencement of this Constitution, limitation and arbitration

14. Contempt of court, but not including contempt of the Supreme Court.

15. Vagrancy; nomadic and migratory tribes.

16. Lunacy and mental deficiency, including places for the reception or treatment of lunatics and mental deficients.

17. Prevention of cruelty to animals.

18. Adulteration of foodstuffs and other goods.

19. Drugs and poisons, subject to the provisions of entry 59 of List I with respect to opium.

20. Economic and social planning.

21. Commercial and industrial monopolies, combines and trusts.

22. Trade Unions; industrial and labour disputes.

23. Social security and social insurance; employment and unemployment.

24. Welfare of labour including conditions of work, provident funds, employers' liability, workmen's compensation, invalidity and old age pensions and maternity benefits.

25. Vocational and technical training of labour.

26. Legal, medical and other-professions.

27. Relief and rehabilitation of persons displaced from their original place of residence by reason of the setting up of the Dominions of India and Pakistan.

28. Charities and charitable institutions, charitable and religious endowments and religious institutions.

29. Prevention of the extension from one State to another of infectious or contagious diseases or pests affecting men, animals or plants.

30. Vital statistics including registration of births and deaths.

31. Ports other than those declared by or under law made by Parliament or existing law to be major ports.

32. Shipping and navigation on inland waterways as regards mechanically propelled vessels, and the rule of the road on such water-ways, and the carriage of passengers and goods on inland waterways subject to the provisions of List I with respect to national waterways.

33. Trade and commerce in, and the production, supply and distribution of, the products of industries where the control of such industries by the Union is declared by Parliament by law to be expedient in the public interest.

34. Price control.

35. Mechanically propelled vehicles including the principles on which taxes on such vehicles are to be levied.

36. Factories.

37. Boilers.

38. Electricity.

39. Newspapers, books and printing presses.

40. Archaeological sites and remains.

41. Custody, management and disposal of property (including agricultural land) declared by law to be evacuee property.

42. Principles on which compensation for property acquired or requisitioned for the purposes of the Union or of a State or for any other public purpose, is to be determined and the form and the manner in which such compensation is to be given.

43. Recovery in a State of claims in respect of taxes and other public demands, including arrears of land-revenue

and sums recoverable as such arrears, arising outside that State.

44. Stamp duties other than duties or fees collected by means of judicial stamps, but not including rates of stamp duty.

45. Inquiries and statistics for the purposes of any of the matters specified in List II or List III.

46. Jurisdiction and powers of all courts, other than the Supreme Court, with respect to any of the matters in this List.

47. Fees in respect of any of the matters in this List, but not including fees taken in any court.

CHAPTER XIX

ADMINISTRATIVE RELATIONS BETWEEN THE UNION AND THE STATES

THE Constitution lays down that the executive power of the States shall be so exercised as to ensure compliance with the laws made by Parliament and not to impede or prejudice the exercise of executive power of the Union. The Union can give necessary directions to the States for these purposes. The Union can also give directions to the States for the maintenance and construction of means of communication declared in such directions to be of national importance and also for the protection of railways within the borders of the States. Any extra costs involved in carrying out these directions must be paid to the States by the Union.

The President may, with the consent of a State Government, entrust to the officers of the latter any functions in relation to any matter to which the executive power of the Union extends. A law made by Parliament may confer powers and impose duties on the officers of a State notwith-

standing that the law relates to a matter falling outside the legislative jurisdiction of the State. It must be understood that the extra costs entailed on the State finances on account of such laws of Parliament or the Union Government's directions will be paid by the Union.

It is provided by Article 259 that States specified in Part B of the First Schedule shall continue to maintain such Armed Forces as were in these States immediately before the commencement of the Constitution, until Parliament otherwise provides. Such Armed Forces shall, however, form part of the Armed Forces of the Union.

Article 260 authorises the extension of the jurisdiction of the Union in relation to territories outside India by agreement with other Governments.

Article 261 lays down that full faith and credit must be given throughout the territory of India to public acts, records and judicial proceedings of the Union and of every State.

Parliament is authorised by Article 262 to make laws for the adjudication of disputes relating to inter-state rivers or river valleys. It is also authorised to exclude by law the jurisdiction of the courts including the Supreme Court in respect of any such disputes.

The President is given power by Article 263 to establish an Inter-State Council to inquire into or make recommendations on inter-state disputes or matters in which some or all States, or the Union and one or more of the States, have a common interest.

It is provided by Article 365 that any failure on the part of a State to carry out the lawful executive directions of the Union may be regarded by the President as a failure of the constitutional machinery in that State and an occasion for supersession by him of the powers of the State authorities.

CHAPTER XX

FINANCIAL PROVISIONS

In this Chapter the States specified in Parts A and B of the First Schedule will be called the autonomous States and the other states will be called Centrally-administered States.

The Constitution creates what are called the "Consolidated Fund of India" and "Consolidated Fund of the State". It is laid down by Article 266 that all revenues received by the Government of India, all loans raised by them and all moneys received by them in repayment of loans shall form one "Consolidated Fund of India". Similarly, in the case of any autonomous State, all its revenues and moneys raised by loans or received in repayment of loans shall constitute a fund to be called "the Consolidated Fund of the State".

All other public moneys, it is provided, that are received by or on behalf of the Union Government or the Government of an autonomous State shall be credited to the public account of India or the public account of the State as the case may be.

No moneys shall be appropriated out of these funds except in accordance with law.

Parliament or the Legislature of an autonomous State may by law establish Contingency Funds to be called the Contingency Fund of India or the Contingency Fund of the State. These Funds will be at the disposal of the President or the Governor or the Rajpramukh as the case may be to enable advances to be made by him to meet unforeseen expenditure pending the authorisation of such expenditure by the Legislature.

DISTRIBUTION OF REVENUES BETWEEN THE UNION AND THE STATES

The Historial Background—A little knowledge of the history of the financial relations between the Government of India and the Provinces will be helpful to the understanding of the provision relating to the distribution of revenues in the Constitution.

The course of financial development in India under the British rule may be said to be an evolution from a unitary to a more or less federal type. At first, the Government of India were in complete control of the entire financial field. The only source of revenue of the Provincial Governments was the grants made to them by the Government of India. Later, the Provincial Governments were given the whole or part of certain heads of revenue such as Forest, Excise, Licence Fees, Stamps, Registration, Law and Justice, Public Works, Education and the like. But the revenues derived from these sources were inadequate for meeting the Provincial requirements and the Centre used to give the Provinces a share of the main source of Central revenue, namely, Land Revenue and also additional cash assignments.

In 1904, the settlements with the Provinces were made quasi-permanent, that is these settlements were not to be altered except in case of extreme necessity.

The Government of India Act, 1919 clearly demarcated the spheres of the Centre and the Provinces in financial matters. Certain sources of revenue were given wholly to the Centre and others wholly to the provinces. There were no divided heads, that is, there was no head of revenue that was to be shared between the Centre and the Provinces. This arrangement was made because the Act of 1919 intended to give the Provinces a measure of autonomy and it was thought that the Provinces should not be made

financially dependent on the Centre. The following heads of revenue were allocated to the Centre—Customs, Income-tax, Opium, Salt, Railways, Post and Telegraphs and Military receipts. And the folowing heads were allocated to the Provinces—Land Revenue, Stamp, Registration, Excise and Forest. This allocation resulted in substantial deficit to the Central Budget. To make up this deficit, the Provinces had to contribute for some years to the Centre large sums of money out of their own revenues. The contributions of the different Provinces to the Centre were fixed by what is known as the Meston award. The Provinces, however, used to resent this arrangement very much. They would regard it as a "crippling burden" on their finances. Since the year 1925 the Provinces began to be granted partial remissions of these contributions till they were given complete remission in 1929.

The Government of India Act, 1935 did not make any substantial alteration in this allocation between the Provinces and the Centre. It, however, laid down that a prescribed percentage of the proceeds of the income tax should be allocated to the Provinces and also that a prescribed percentage of the proceeds from jute export duty should be given to the jute-growing Provinces. Thus, two Central heads of revenue were to be divided ones, from which shares were to be given to the Provinces. Further, the Act gave power to the Central Legislature to distribute to the Provinces and federating States excise and export duties levied and collected by it. The Act also provided for the grant of fixed subventions to some of the smaller provinces. All these arrangements were intended to strengthen the position of the Provinces. Though the Provinces had to bear the main burden of nation-building activities such as Education, Health, Medical Relief etc. they had not been given any elastic source of revenue under the

Act of 1919. This defect of the Act of 1919 was sought to be remedied by the Act of 1935 by granting to the Provinces shares in two elastic sources of Central revenue, namely, Income-tax and Customs and by the other provisions mentioned above. The shares of the Provinces in respect of Income-tax and jute export duty as well as the subventions to be granted to some of them were fixed by an Order-in-Council after a report on these matters was submitted by Sir Otto Niemeyer. The shares of the different Provinces as fixed under the Niemeyer award were modified a little during the war but substantially they remained unaltered till the day on which India attained her independence.

Under the Niemeyer award the provinces were to receive the following subventions—the U.P. Rs. 25 lakhs for 5 years; Assam Rs. 30 lakhs; Orissa Rs. 47 lakhs for one year; Rs. 43 lakhs a year for the next four years, and Rs. 40 lakhs annually thereafter; N.W.F.P. Rs. 100 lakhs and Sind Rs. 105 lakhs.

And as regards the distribution of the income-tax between the provinces and the Centre, the Niemeyer award recommended that 50 p.c. of the proceeds of the tax should be made available to the provinces. But this could not be done immediately and should be done in course of 10 years. Meanwhile, the Centre was to retain from the shares of the Provinces the whole of such amount as together with the receipts from the railways will bring the Centre's share in the divisible pool to Rs. 13 crores. The funds available for distribution among the provinces were to be distributed in the following manner:—Bombay and Bengal 20 per cent each; Madras and U.P. 15 per cent each; the Punjab 8 p.c.; Bihar 10 p.c.; the C.P. and Berar 5 p.c.; Assam, Orissa and Sind 2 p.c. each; the N.W.F.P. 1 p.c.

In respect of jute-export duty, the Niemeyer award recommended that 62½ per cent of the export duty should be assigned to the jute-growing provinces.

The provisions of the new Constitution —The financial provisions of the new Constitution are more or less similar to those of the Government of India Act, 1935. The sources of revenue have been distributed between the Centre and the autonomous States. But whereas these States are to retain the entire proceeds from the heads allocated to them, the proceeds of some of the heads of revenue which fall within the Centre's legislative jurisdiction are to be, or may be, assigned wholly or partly to these States.

The main sources of Central revenue are the following:—Income-tax; Customs; Excise duties on tobacco and all other goods produced in India, except alcoholic liquors for human consumption, opium, Indian hemp and other narcotic drugs and narcotics; Corporation tax; taxes on capital value of companies. Some other taxes to be levied by the Centre are to be allocated wholly to the autonomous States.

The main sources of revenue of the autonomous States are the following:—Land revenue, taxes on agricultural income; duties in respect of succession to agricultural land; estate duty in respect of agricultural land; taxes on lands and buildings; taxes on mineral rights; duties on alcoholic liquors for human consumption, opium, Indian hemp and other narcotic drugs and narcotics; taxes on the entry of goods into a local area; taxes on the consumption and sale of electricity; taxes on the sale or purchases of goods other than newspapers; taxes on advertisements other than advertisements published in newspapers; taxes on goods and passengers carried by road or on inland waterways; taxes on vehicles, taxes on professions; trades, callings and employments; taxes on luxuries, entertainments, amusements, betting and gambling; stamp duties; and shares of

Income-Tax and allocations from the proceeds of certain other taxes to be levied by the Centre.

Let us see how the proceeds of some of the heads of revenue which fall within the Centre's legislative jurisdiction are to be or may be assigned wholly or partly to the autonomous States:

(1) The following duties are to be levied by the Union but are to be collected and wholly appropriated by the autonomous States:—(*a*) Stamp duties in respect of bills of exchange, cheques, promissory notes, bills of lading, letters of credit, policies of insurance, transfer of shares, debentures, proxies and receipts; (*b*) excise duties on medicinal and toilet preparations containing alcohol or opium or Indian hemp or other narcotic drugs and narcotics.

(2) The following duties and taxes are to be levied and collected by the Union but shall be wholly assigned to the autonomous States within which they are leviable according to principles of distribution laid down by Parliament by law:—(*a*) duties in respect of succession to property other than agricultural land; (*b*) estate duty in respect of property other than agricultural land; (*c*) terminal taxes on goods or passengers carried by railway, sea or air; (*d*) taxes on railway freights and fares; (*e*) taxes other than stamp duties on transactions in stock-exchanges and futures market; (*f*) taxes on the sale or purchase of news-papers and on advertisements published therein.

(3) The following taxes are to be levied and collected by the Union but are to be distributed between the Union and the autonomous States within which they are leviable according to principles prescribed by the President:—taxes on income other than agricultural income.

It must be understood that the net proceeds of the taxes on income, of which a share is to be distributed among the autonomous States, must not include any proceeds

attributable to the Centrally-administered areas or taxes payable in respect of Union emoluments.

It is provided that after a Finance Commission has been constituted (see below) the President in fixing the principles of distribution of the taxes on income must take into consideration the recommendations of the Finance Commission.

(4) The following taxes which are to be levied and collected by the Union may, if Parliament so provides by law, be wholly or partly distributed between the autonomous States within which they are leviable according to principles of distribution laid down by such law:—Union duties of excise other than such duties of excise on medicinal and toilet preparations as have been mentioned in item (1). The duties of excise on medicinal and toilet preparations mentioned in item (1), it should be noted, are to be collected and wholly appropriated by the autonmous States.

Grants from the Union to certain States —Article 275 empowers Parliament to provide by law for giving grants-in-aid from the revenues of the Centre to such autonomous States as, in the opinion of Parliament, need such assistance.

The Article further lays down that the cost of all schemes, approved by the Central Government, which may be undertaken by any autonomous State to promote the welfare of the Scheduled Tribes in the State or to raise the level of administration of the Scheduled Areas therein to that of the rest of the State is to be borne from the Central revenues. That is, the necessary grants for this purpose must be made by the Centre to the States concerned.

Similar grants must also be made to Assam to enable it to meet the costs for raising the level of administration of the autonomous districts (see Chapter XXVII) to that of the rest of the State.

A special provision is made in the case of Assam. The Centre must give Assam as grants-in-aid sums equivalent to the average excess of expenditure over the revenues during the two years immediately preceding the commencement of the Constitution in respect of the administration of the autonomous districts.

Grants in lieu of export duty on Jute—Under Article 273, such sums as may be prescribed by the President shall be paid to the States of West Bengal, Bihar, Assam and Orissa in lieu of assignment of any share in jute export duty.

These sums are to be paid to the States mentioned above so long as jute export duty continues to be levied or until the expiration of ten years from the commencement of the Constitution, whichever is earlier.

It is to be understood that after the Finance Commission (see below) has been constituted, the President is to take into consideration its recommendations before prescribing the sums to be paid to these States under this Article.

Taxes on professions trades and callings –Article 276 lays down that taxes on professions, trades and callings imposed by a State law for the benefit of the State or any municipality or any other local authority shall not be invalid on the ground that they relate to a tax on income. The total amount of such tax payable in respect of any one person to the State or to any one local authority shall not exceed Rs. 250/- per annum.

Agreement with States in Part B of the First Schedule in respect of some financial matters

In spite of the general financial provisions mentioned above, the Government of India can enter into any agreement with the Government of a State mentioned in Part B of the First Schedule with regard to the following matters:—

(1) The levy and collection of any tax or duty leviable by the Government of India in such State and for distribution of the proceeds thereof.

(2) The grant of any financial assistance by the Centre to such State on account of the loss of revenue caused due to any former source of State revenue coming within the Centre's jurisdiction.

(3) The payment to be made by such a State to the Centre in connection with the privy purses of rulers.

Any such agreement between the Centre and a State shall continue in force for a period not exceeding ten years from the commencement of the Constitution. The President, however, has been authorised to terminate or modify any such agreement if after the consideration of the Finance Commission's report he thinks it necessary to do so.

The Finance Commission—Article 280 provides for the constitution of a Finance Commission. A Finance Commission is to be constituted by the President within two years from the commencement of the Constitution, and thereafter at the expiration of every fifth year or earlier. Such a Commission is to consist of a Chairman and four other members. While they are to be appointed by the President, Parliament will lay down by law the qualifications requisite for appointment as members of the Commission and also the manner in which they shall be selected.

The duty of the Commission will be to make recommendations to the President regarding (*a*) the distribution between the Centre and the autonomous States of the proceeds of such taxes as are to be or may be divided between them; (*b*) the principles which should govern the grants-in-aid from the Centre to the States; (*c*) the continuance or modification regarding financial agreements with States in Part B of the First Schedule; (*d*) any other matter that may be referred to the Commission by Parliament.

The recommendations of the Commission as well as a memorandum on the actions taken thereon must be laid before Parliament.

Miscellaneous Financial Provisions—The Constitution lays down some important provisions relating to exemption of the Union and the State properties from taxation, restrictions as to taxes on the sale or purchase of goods and privy purses of rulers.

According to Article 285, the property of the Union shall, except in so far as Parliament may otherwise provide, be exempt from taxation by an autonomous State or any authority in such a State.

Similarly, the property and income of an autonomous State shall be exempt from Union taxation.

Nothing, however, shall prevent the Union from taxing any business or trade carried on by an autonomous State, except such trade or business as Parliament may declare by law to be incidental to the ordinary functions of Government.

Article 286 states that no law of any autonomous State shall impose or authorise the imposition of a tax on the sale or purchase of goods where such sale or purchase takes places (a) outside the State or (b) in the course of import or export of the goods into or outside the territory of India.

Further the Article provides that no State shall tax the sale or purchase of goods taking place in course of inter-State trade or commerce, except in so far as Parliament may otherwise provide by law.

Clause (3) of the Article states that no State law imposing a tax on the sale or purchase of such goods as have been declared by Parliament to be essential for the life of the community shall be valid unless such law has been reserved for the President's consideration and has received his assent.

Privy purses of Rulers—If any ruler of any Indian State has been assured by the Government of India by agreement or covenant of the payment of a tax-free sum as privy purse, such sums shall be charged on the Consolidated Fund of India and be exempt from all taxes on income. If the territories of any such Indian State are comprised within any autonomous State, the latter would be required to pay such contributions towards the privy purse, and for such period as may be prescribed by the President.

CHAPTER XXI

AMENDMENT OF THE CONSTITUTION

THE procedure laid down by the Constitution for its amendment is neither too easy as in England, nor too difficult as in the United States. In England an ordinary legislation of Parliament can amend the constitution. In the United States, however, every amendment must be proposed either by a two-thirds majority of each House of Congress or by a special convention called by Congress, if two-thirds of the State legislatures ask for the calling of such a convention. The amendment is then submitted either to the State Legislatures or to special State Conventions called for the purpose. If three -fourths of the States agree to the amendment, it becomes part of the constitution.

The Constitution of India, however, strikes a middle course thereby avoiding extreme rigidity or extreme flexibility. The general provision laid down for amendment is that an amendment to this Constitution can be initiated only by the introduction of a Bill in either House of Parliament. If such a Bill is passed by each House by a majority of the total membership of the House and a two-thirds majority of the members present and voting and there-

after assented to by the President, the Constitution will stand amended in terms of the Bill. (Art. 368).

It has been provided that if such a Bill seeks to amend any of the following provisions of the Constitution, it must be ratified by at least half the Legislatures of the States specified in Parts A and B of the First Schedule, before it is presented to the President for assent:—

(1) Article 54 which deals with the election of the President.
(2) Article 55 which deals with the manner of election of the President.
(3) Article 73, which deals with the extent of the executive power of the Union.
(4) Article 162; which deals with the extent of the executive power of the States in Part A of the First Schedule.
(5) Article 241 dealing with the High Courts in States in Part C of the First Schedule.
(6) Chapter IV of Part V, which deals with the Union Judiciary.
(7) Chapter V of Part VI, which deals with High Courts in the States.
(8) Chapter I of Part XI, which deals with Legislative Relations.
(9) The Legislative Lists.
(10) Article 368 itself which lays down all these procedures for amendment.

Thus, it will be seen, that the provision for amendment of the Constitution is in conformity with the principles of federalism. The Central Legislature has not been given authority to change the distribution of powers made by the Constitution, or rather, it can change the demarcation of legislative and executive spheres only with the consent of at least half the Legislatures of the autonomous States. If

the Centre had been given the power of altering the division of powers, as laid down by the Constitution, then certainly the Indian Constitution would not have been federal in type. For in that case, the Centre would have been supreme and in a position to destroy the autonomy of the States.

It may be noted, however, that the State Legislatures have been given no power to amend their own constitutions. In Canada and the Commonwealth of Australia, the Provinces and the States respectively can amend their own constitutions within the federal frame-work. Differences of political evolution explain this difference.

CHAPTER XXII

THE HIGH COURTS AND THE SUBORDINATE COURTS

UNDER the Constitution, there will be a High Court in each of the States specified in Parts A and B of the First Schedule. The High Court exercising jurisdiction in relation to any Province or Indian State immediately before the commencement of the Constitution will be deemed to be the High Court for the corresponding State. The High Courts in both groups of States will have almost the same powers and functions. These are described below. Parliament has been authorised to constitute a High Court for each State specified in Part C of the First Schedule. The provisions applicable to the High Courts in the autonmous States will also be applicable to the High Courts in the Centrally-administered States, subject to such modifications as the Parliament may by law provide.

Every High Court will be a Court of record and will have all the powers of such a court including the power to punish for contempt of itself. Every High Court will consist of a Chief Justice and other Judges who will be appointed

by the President. The number of Judges will be subject to a maximum to be fixed by the President from time to time. Every Judge will be appointed by the President after consultation with the Chief Justice of India and the Governor or Rajpramukh of the State and in the case of appointment of a Judge other than the Chief Justice, the Chief Justice of the High Court of the State. A person will not be qualified to be appointed as a Judge of a High Court unless he is a citizen of India and (*a*) has held a judicial office for at least ten years in the territory of India; or (*b*) has been an advocate for at least ten years in a High Court in any of the States specified in the First Schedule or of two or more such Courts in succession. The age of retirement of the Judges will be 60 years. A judge may resign his appointment and can be removed from office in the same manner as has been provided for the removal of a Judge of the Supreme Court. That is, he can be removed only by an order of the President passed after an address by each House of Parliament has been presented to the President in the same session for such removal on the ground of proved misbehaviour or incapacity. The address, however, must have been supported by a majority of total membership of that House and by a majority of not less than two-thirds of the members of the House present and voting. No person, it is laid down, who has held office as a Judge of a High Court after the commencement of this Constitution shall plead or act in any court or before any authority within the territory of India. In States specified in Part A of the First Schedule, the salary of the Chief Justice will be Rs. 4,000/- per month and that of other Judges Rs. 3,500/- per month. In each of the States specified in Part B of the First Schedule the Judges will receive such salaries as may be determined by the President after consultation with the Rajpramukh.

The jurisdiction of the High Courts will be the same as immediately before the commencement of the Constitution. That is, the High Courts will be the highest Courts of appeal in both criminal and civil matters in the States. In Calcutta, Madras and Bombay, the High Courts, as before, will have both original and appellate jurisdiction. Hitherto the original jurisdiction of the High Courts were subject to restrictions in revenue matters, they having no such jurisdiction in these matters so long as the collection or any other matter relating to the revenue was being done in accordance with the usage of the country or the law for the time being in force. The new Constitution removes all these restrictions on the exercise of the High Courts' original jurisdiction.

The High Courts will have powers of superintendence over all courts and tribunals within their respective jurisdictions. Both for the enforcement of the fundamental rights and for any other purpose the High Courts will have the power of issuing orders or writs, including writs in the nature of *habeas corpus, mandamus,* prohibition, *quo warranto* and *certiorari* or any of them to any person or authority including any Government within their jurisdiction.

If any High Court is satisfied that a case pending in a court subordinate to it involves a substantial question of law as to the interpretation of the Constitution, it must withdraw the case to itself. Thereafter, it may either dispose of the case itself or it may determine the said question of law and return the case to the court from which it was withdrawn to be disposed of in conformity with its judgment.

Parliament has been authorised to extend the jurisdiction of a High Court to, or exclude the jurisdiction from,

any State other than the State in which the High Court has its principal seat.

The Subordinate Courts –Appointment, posting and promotion of district judges in any State will be made by the Governor or Rajpramukh after consultation with the High Court. Persons not already in the service of the Union or of the State will be eligible for appointment as district judges only if they have been for not less than seven years an advocate or a pleader and are recommended by the High Court for appointment. The expression "district judge" includes judges of a city civil court, additional district judge, joint district judge, assistant district judge, chief judge of a small cause court, chief presidency magistrate, additional chief presidency magistrate, sessions judge, additional sessions judge and assistant sessions judge.

Appointment of persons other than district judges to the judicial service of a State will be made by the Governor or Rajpramukh in accordance with rules made by him in that behalf after consultation with the State Public Service Commission and with the High Court. "Judicial service" means a service consisting exclusively of persons intended to fill the posts of district judges and other civil judicial posts inferior to the post of a district judge.

The control over district courts and courts subordinate thereto will be vested in the High Courts. This power of control includes that of control over the posting, promotion and grant of leave to persons belonging to the judicial service and holding posts inferior to that of a district judge.

The Governor or Rajpramukh may direct by notification that all the above provisions relating to the subordinate courts and the judicial service of the State shall be applicable to any class or classes of magistrates in the States subject to such modifications as may be specified by him.

CFHAPTER XXIII

ELECTIONS

Adult Suffrage—As has been already pointed out, the Constitution provides that all elections to the House of the People and the Legislative Assemblies of the States shall be on the basis of adult sufferage. This is one of the greatest merits of this Constitution. By this provision the Constitution abolishes, at one stroke, the entire pernicious system of communal electorates which the British introduced in the country as part of their divide and rule policy. It also abolishes all kinds of property qualifications for voters. Thus, at least so far as the Lower Houses at the Centre and the States are concerned, the principle, of 'one man, one vote' will be strictly adhered to. Even in Britain this principle, it may be noted, has not been carried to its logical conclusion. There, a business man or a professional man can claim a vote in a constituency other than that in which he resides if he occupies business premises of the value of £10 a year or more in that constituency. This results, in some cases in one man having more than one vote. "The consequence of these additional votes is that though there are only about 30 million adults (in Britain), there are 33 million registered voters."

The Election Commission—The Constitution provides for the setting up of an Election Commission. The superintendence, direction and control of the preparation of the electoral rolls and the conduct of elections to Parliament and the State Legislatures as well as the election to the offices of the President and the Vice-President will be vested in the Commission. It is the Commission that will appoint the election tribunals. The Commission will consist of a Chief Election Commissioner and other members, all of whom are to be appointed by the President, subject to the provisions of any law made by Parliament. The President

has been empowered to appoint Regional Commissioners to assist the Commission in respect of election to the State Legislatures.

Though the President has been empowered to determine the conditions of service of the Election Commissioners, it is provided that the Chief Election Commissioner shall not be removed from office except in like manner and on the like grounds as a Judge of the Supreme Court. And, it is further laid down, other Election Commissioners shall not be removed except on the recommendations of the Chief Election Commissioner.

Only One Electoral Roll—There is to be only one general electoral roll for every territorial constituency and no person will be ineligible for inclusion in such roll on grounds only of religion, race, caste, sex, or any of them. Nor shall the claims of any person to be included in a special electoral roll be entertained.

Provisions with respect to electoral matters—Parliament has been empowered by the Constitution to make provisions regarding all matters connected with elections such as preparation of electoral rolls, the delimitation of constituencies both for the Centre and the States. The State Legislatures, too, will have power to make provisions in relation to all such matters connected with election to these Legislatures as are not covered by the laws made by Parliament. According to Article 329, validity of any law made by Parliament or any State Legislature regarding the delimitation of constituencies or the allotment of seats to such constituencies cannot be called in question in any court. Also, according to that Article, no election can be called in question except by a petition to such authority as may be set up by the appropriate Legislature, that is, by Parliament in case of elections to that body and by a State Legislature in case of election to such a Legislature.

CHAPTER XXIV

SPECIAL PROVISIONS RELATING TO CERTAIN CLASSES

THOUGH the Constitution has abolished the system of communal electorates, it has made some special provisions in respect of certain classes. These special provisions have been made mainly for educationally backward classes and in most cases for a certain limited period, namely, ten years. Some special favour has been shown to the Anglo-Indian Community also. But in their case, too, all such special concessions are to come to an end at the end of ten years from the commencement of the Constitution.

Provisions Relating to Reservation of Seats in the Legislatures—Provisions have been made for reservation of seats in the House of the People and in the Legislative Assemblies of the States for the Scheduled Castes and the Scheduled Tribes. These provisions have already been described in the chapters on Parliament and the State Legislatures. All these provisions will cease to have effect at the expiration of a period of ten years from the commencement of the Constitution. Similarly, the provisions for the nomination of the representatives of the Anglo-Indian community to the House of the People and the Legislative Assemblies of States, which have been already referred to, will cease to have effect at the expiration of ten years from the commencement of the Constitution.

Special provisions relating to services—By article 335, the Constitution directs that in making appointments to services and posts in connection with the Union or State affairs, the claims of the Scheduled Castes and the Scheduled Tribes must be taken into consideration.

A special provision has been made for the Anglo-Indian Community also. It has been laid down that the privileges which were being enjoyed by the Anglo-Indian Community

immediately before August 15, 1947, in railway, customs, postal and telegraph services, must be granted to them during the first two years after the commencement of the Constitution. During every succeeding period of two years, however, the posts reserved for the Anglo-Indian Community in these services must be reduced by ten per cent of the figure for the preceding period of two years. And at the end of ten years from the commencement of the Constitution all these reservations will be extinguished.

Special Provisions relating to the educational grants for the Anglo-Indian Community—The educational grants made by the Union and any of the autonomous States for the benefit of the Anglo-Indian Community in the financial year ending on March, 1948, must be continued for the first three financial years from the commencement of the Constitution. During every succeeding period of three years these grants may be reduced by ten per cent of the figure for the preceding three years. At the end of ten years from the commencement of the Constitution all such grants, to the extent they are a special concession, must cease. It is provided that no special grant during this period of ten years shall be made to educational institutions which do not make available at least forty per cent of their seats to members of communities other than the Anglo-Indian Community.

Special Officers for the Scheduled Castes and the Scheduled Tribes etc.—The President must appoint a Special Officer to investigate and report on matters relating to the safeguards, including the working of the safeguards, provided by the Constitution for the Scheduled Castes, the Scheduled Tribes and the Anglo-Indian Community. The scope of the Officer's duty will extend to the conditions of other backward classes if the President so directs.

Control of the Union in matters relating to the Scheduled Areas and the Scheduled Tribes—The President must, at the end of

ten years from the commencement of the Constitution, appoint a Commission to report on the administration of the Scheduled Areas and the Scheduled Tribes in the autonomous States. The executive power of the Union will extend to giving directions to any such State in regard to the drawing up and execution of any scheme which may be specified in such directions as essential for the welfare of the Scheduled Tribes in the States.

Commission for Backward Classes—The President has been empowered to appoint a Commission to investigate and report on the conditions of socially and educationally backward classes and to make recommendations as to the steps necessary for removing the difficulties they suffer from.

The Scheduled Castes and the Scheduled Tribes—The President has been empowered to specify, after consultation with the Governor or the Rajpramukh of a State, the groups or races or castes who are to be deemed as the Scheduled Castes in relation to that State. Parliament alone has been authorised to include in or exclude from the list so specified by the President any groups or castes or races or any part of them.

In an exactly similar way, the President may specify by public notification the tribes or tribal communities who are to be deemed as the Scheduled Tribes in relation to any State. Parliament alone has been authorised to alter the list so specified.

CHAPTER XXV

OFFICIAL LANGUAGE

THE Constitution contains elaborate provisions for the official languages of the Union and the States. The framers of the Constitution felt the difficulty of making a sudden transition from the English language, and also the need for retaining English for certain purposes for a certain interim period. This is why the provisions for the official languages have been more complicated than they would otherwise have been.

Language of the Union—Hindi in Devanagri Script is to be the official language of the Union. The form of numerals to be used for the official purposes of the Union will be the international form of Indian numerals (that is, 1, 2, 3, 4 etc.)

Notwithstanding this general provision, it is laid down, for a period of fifteen years from the commencement of the Constitution, the English language is to continue to be used for all those official purposes of the Union for which it was being used immediately before such commencement.

The President, however, has been empowered during this period of 15 years to authorise the use of Hindi language and the Devanagri form of numerals in addition to English and the international form of Indian numerals for any of the official purposes of the Union.

Also, notwithstanding all these provisions, Parliament has been empowered to provide by law for the use of English language and the Devanagari form of numerals for any specified purposes, after the said period of fifteen years.

Regional Languages—The Legislature of any State can adopt one or more languages or Hindi as the official language or languages of the State to be used for any specified purposes. Until the Legislature of a State otherwise

provides, English shall be used for those official purposes for which it was being used immediately before the commencement of the Constitution.

The language which is for the time being the authorised language for the official purposes of the Union is to be the language for communication between one State and another and a State and the Union. It is provided, however, that by mutual agreement two or more States can adopt Hindi as the language for communication between themselves.

A special provision has been made for people (minorities) forming a substantial proportion of the population of any State. If the President is satisfied that such people desire the language spoken by them to be recognised by the State as an official language for any purposes throughout the State or in any part thereof, he may issue a special directive to the State to that effect. Thereupon the State concerned must recognise the use of that language in such areas and for such purposes as may be specified in the directive.

Official Language of the Supreme Court, High Courts etc.—Until Parliament otherwise provides, all proceedings in the Supreme Court and in every High Court, and the authoritative texts of all Bills, Acts, Orders, Rules, Regulations of the Central and State Legislatures and also of all Ordinances must be in English Language. The Governor or Rajpramukh of a State may, with the consent of the President, authorise the use of any official State language in the proceedings of the High Court of the State but not for any judgment, decree or order passed by such High Court. If the Legislature of a State prescribes the use of any language other than English for use in Bills or Acts or Ordinances or rules and regulations, an English translation of the same authorised by the Governor or the

Rajpramukh must be deemed to be the authoritative texts thereof.

No Bill or amendment making provision for any of the purposes mentioned in the above paragraph can be introduced in Parliament within a period of fifteen years from the commencement of the Constitution without previous sanction of the President. And the President must not give such sanction without taking into consideration the recommendations of the Language Commission and the report of the Parliamentary Committee (mentioned below).

The Language Commission and the Parliamentary Committee—The President must, at the expiration of 5 years from the commencement of the constitution and thereafter at the expiration of 10 years from such commencement constitute a Commission to make recommendations with regard to the following matters:—(*a*) the progressive use of Hindi language for the official purposes of the Union; (*b*) restrictions on the use of the English language for all or any of the purposes of the Union; (*c*) the official language of the Supreme Court, High Courts, Legislatures etc.; (*d*) the form of numerals to be used for any one or more specified purposes of the Union; (*e*) any other matter referred to the Commission by the President as regards official language of the Union and the language for communication between the Union and a State or between one State and another and their use. The Commission is to consist of a Chairman and other members. The members must represent the following languages:—Assamese, Bengali, Gujarati, Hindi, Kannada, Kashmiri, Malayalam, Marathi, Oriya, Punjabi, Sanskrit, Tamil, Telegu and Urdu.

A Parliamentary Committee consisting of 30 members, of whom 20 will be members of the House of the People and 10 of the Council of States will report to the President their opinion on the recommendations of the Commission.

After consideration of this report the President may issue directions in accordance with the whole or part of that report. It must be understood that the President will have power to alter or modify in practice any of the Constitutional provisions regarding the official language of Union by such directions.

Special Directives—The Constitution directs that every person shall be entitled to make representation for the redress of any grievances to any Union or State authority in any of the Languages used in the Union or the State:

The Constitution further directs that the Union must promote the development of Hindi in such a manner as to make it a suitable medium of expression for all the elements in the composite culture of India. To secure this aim, Hindi must be enriched by assimilating the expressions and forms from Hindusthani and the following Indian languages —Assamese, Bengali, Gujarati, Punjabi, Sanskrit, Tamil, Telegu and Urdu. For its vocabulary Hindi must be made to draw primarily on Sanskrit and secondarily on the other languages mentioned above.

CHAPTER XXVI

PUBLIC SERVICE COMMISSIONS

PUBLIC SERVICE COMMISSIONS are an essential feature of a democratic system of Government. Along with the Judiciary and the Audit department, they constitute a machinery to maintain the purity and efficiency of the administration.

Under the new Constitution there will be a Public Commission for the Union and a Public Service Commission for each of the autonomous States. Two or more States may agree to have a Joint Commission and on resolutions to that effect being passed by their Legislatures, Parliament

may by law provide for the appointment of such a Joint Commission.

The Chairman and other members of the Union Commission or of a Joint Commission will be appointed by the President and those of a State Commission, by the Governor or the Rajpramukh of the State. The President will determine the number of members of the Union Commission or a Joint Commission. And the Governor or the Rajpramukh will determine the number of members of a State Commission. It is provided that as nearly as may be at least one-half of the members of every Public Service Commission must be persons who at the dates of their respective appointments have held office for at least ten years either under the Government of India or under the Government of a State.

A member of a Public Service Commission will hold office for a term of six years or till he attains, in the case of the Union Commission, the age of sixty-five years and in the case of a State or Joint Commission, the age of sixty years, whichever is earlier.

A member of a Public Service Commission may resign his office. He can be removed from his office by the President on the ground of misbehaviour. But he can be so removed only if the Supreme Court, on a reference made to it by the President, has, after an enquiry reported that he ought to be removed on any such ground. Any member of a Public Service Commission may, however, be removed from office by the President, if he (*a*) is adjudged an insolvent; or (*b*) engages during his term of office in any paid employment outside the duties of his office; or (*c*) is, in the President's opinion, unfit to continue in office by reason of infirmity of mind or body.

A member of a Public Service Commission will, on the expiration of his term of office, be ineligible for reappoint-

ment to that office. On ceasing to hold office, the Chairman of the Union Commission will be ineligible for further employment either under the Central Government or any State Government. Other members of the Union Commission, as well as the members of State Commissions including their Chairmen, will, on ceasing to hold office, be eligible for appointment only as members and Chairmen of Public Service Commissions and not for any other Government employment. It is specifically laid down that, on ceasing to hold office—(*a*) a member of the Union Commission (other than the Chairman) shall be eligible for appointment only as the Chairman of the Union Commission or as the Chairman of a State Commission; (*b*) a member other than the Chairman of a State Commission shall be eligible for appointment only as the Chairman or any other member of the Union Commission or as the Chairman of that or any other State Commission; (*c*) the Chairman of a State Commission shall be eligible for appointment only as the Chairman or any other member of the Union Commission or as the Chairman of any other State Commission.

The chief function of the Union and the State Commissions will be to conduct examinations for appointments to the services of the Union and of the State respectively. It is laid down that in respect of civil services and posts, the Union Commission or the State Commission, as the case may be, must be consulted on the following matters—methods of recruitment; principles to be followed in making appointments, promotions and transfer; disciplinary matters; claims for injuries or defence of legal proceedings. In respect of other services and posts including all-India services, the President or the Governor or the Rajpramukh as the case may be, may make regulations specifying the matters in which either generally or in any particular class of cases, it shall not be necessary for a Public Service

Commission to be consulted. All such regulations must be placed before Parliament or the State Legislature, as the case may be, and will be subject to repeal or modification by these bodies.

The Union, the State and Joint Commissions are required to submit annual reports on the work done by them to the President or the Governor or the Rajpramukh as the case may be. These reports must be laid before the appropriate Legislatures together with a statement of reasons, in respect of cases in which the advice of the Commission concerned was not accepted, for such non-acceptance.

CHAPTER XXVII

THE ADMINISTRATION AND CONTROL OF THE SCHEDULED AREAS AND THE SCHEDULED TRIBES IN THE AUTONOMOUS STATES

THE Fifth Schedule to the Constitution contains provisions for the administration of the Scheduled Tribes and the Scheduled Areas in the autonomous States. But these provisions will not apply to the tribal areas in the State of Assam, for which special provisions have been laid down in the Sixth Schedule.

The Scheduled Tribes and The Scheduled Areas—As has already been pointed out, the Scheduled Tribes will be such tribes as the President will declare to be the Scheduled Tribes in relation to any State.

Similarly, the Scheduled Areas will be such areas as the President will declare by order to be Scheduled Areas. The President alone has been authorised to modify such an order and his power of modifying such order will be limited to certain specified matters: (1) He may declare that the whole

or any part of a Scheduled Area shall cease to be such area.

(2) He may rectify the boundaries of any Scheduled Area.

(3) On the creation or the admission into the Union of a new State or on the alteration of the boundaries of a State he may declare any territory not previously admitted into a State to be or to form part of a Scheduled Area.

The Administration of the Scheduled Areas has been placed under the control of the State Executive, which, in this matter, will be under the general control of the Union Executive. The Governor or the Rajpramukh, has been authorised to make regulations for the peace and good government of the Scheduled Areas and also to modify any State or Union Law in their application to such areas. These regulations, however, will not be valid unless assented to by the President. The Union Executive will have power also to issue directions to any State for the administration of the Scheduled Areas. Before making regulations for the government of the Scheduled Areas, the Governor must consult the Tribes Advisory Council (See below). Regarding the administration of the Scheduled Areas, the Governor or the Rajpramukh, as the case may be, has been required to submit reports to the President annually or whenever so required by the President.

It must be clearly understood that in administering the Scheduled Areas, the Governor will have to act generally on the advice of the Ministry and not in his discretion.

The Tribes Advisory Council—In every State containing Scheduled Areas there shall be established a Tribes Advisory Council. Also, if the President so directs, such Councils must be formed in States having Scheduled Tribes but no Scheduled Areas therein. The Council will consist of not more than twenty members of whom as nearly as may be three-fourths must be the representatives of the Scheduled Tribes in the Legislative Assembly of the State. If the

number of members of representatives of the Scheduled Tribes in the Legislative Assembly of the State is less than the number of seats to be filled up by them, the remaining seats must be filled by other members of those tribes. The duty of the Tribes Advisory Council will be to advise on such matters relating to tribal welfare and advancement in the State as may be referred to it by the Governor or the Rajpramukh as the case may be.

The Governor has been given the power to fix the number of members of the Council and make rules regarding the mode of appointment of the members of the Council including its Chairman and also other procedural matters.

Amendment —Parliament has been authorised to amend all the above provisions (contained in the Fifth Schedule). And the amendment of the above provisions will not require the procedure laid down by Article 368 for the amendment of the Constitution, that is, these provisions can be amended by a simple majority in Parliament.

Special Provisions for the tribal people—For the convenience of the reader the special provisions of the Constitution relating to the tribal population of India are being recapitulated below.

The President has been authorised by the Constitution to declare tribes and areas specified by him as the Scheduled Tribes and the Scheduled Areas. The Constitution has made various special provisions for the peace, good government and advancement of the Scheduled Tribes and the Scheduled Areas. As regards the general provisions relating to the administration of the tribal areas, to be called the Scheduled Areas, see above. For the provisions relating to the administration of the tribal areas in Assam, see below. Other special provisions of the Constitution for the Scheduled Tribes and the Scheduled Areas are the following:—

In the first place, the Constitution provides for the reservation of seats in the House of the People for the Scheduled Tribes except the Scheduled Tribes of those tribal areas of Assam which are not included in the autonomous districts. The Constitution also provides for the reservation of seats in the Legislative Assemblies of the autonomous States for the Scheduled Tribes except those of the tribal areas in Assam which fall outside the autonomous districts. These special provisions for the reservation of seats for the Scheduled Tribes will, however, cease to have effect at the end of ten years from the commencement of the Constitution.

The President has been given power by the Constitution to issue directions to the autonomous States for the execution of specified schemes to promote the welfare of the Scheduled Tribes in the States. It is also laid down by the Constitution that the Centre must give grants-in-aid to the autonomous States in order to enable them to meet the costs of Centre-approved schemes for tribal welfare. Such grants must also be given to the States for the Centre-approved schemes designed to raise the level of administration of the Scheduled Areas in the States to that of other areas therein. So far as the autonomous districts of Assam are concerned, the Centre must pay grants-in-aid to that State for raising the level of administration of these tribal districts to that of the rest of the areas in that State. Further, the Centre must pay Assam such grants as are equivalent to the average excess of expenditure over the revenues during the two years immediately preceding the commencement of the Constitution in respect of the administration of the autonomous districts.

In each of the States of Bihar, Madhya Pradesh and Orissa, it is directed by the Constitution, there must be a Minister in charge of tribal welfare.

The President has been empowered to appoint at any time a Commission to report on the administration of the Scheduled Tribes and the Scheduled Areas in the autonomous States. A Special Officer is to be appointed by the President to investigate, and report to him from time to time, on matters relating to the safeguards provided in the Constitution for the Scheduled Tribes (and also Scheduled Castes) and on the working of such safeguards.

Administration of the Tribal Areas in Assam—Special provisions have been laid down in the Sixth Schedule to the Constitution for the administration of the tribal areas of Assam. The reason for the distinction made between the tribes of Assam and those of the rest of the country is that culturally the tribes of Assam are greatly different from those of other areas. Whereas the tribes in other parts of the country can be said to belong more or less to the Hindu culture and have Hindu ways of life in many respects, the tribes in Assam are not so. They have a distinct culture of their own.

The tribal areas of Assam have been divided into two parts—Part A and Part B.

(A) Part A includes the following tribal areas:—(1) The United Khasi-Jaintia Hills District, (2) The Garo Hills District, (3) The Lusai Hills District, (4) The Naga Hills District, (5) The North Cachar Hills and (6) The Mikir Hills. These are to be called the autonomous districts. They have been given a large measure of autonomy in internal matters. The Governor has been empowered to define the areas of these districts and also to increase or diminish the areas of any of them or to create a new autonomous district. If there are different Scheduled Tribes in an autonomous district the Governor may divide the areas concerned into autonomous regions. There will be a District Council for each autonomous district consisting

of not more than twenty-four members, of whom not less than three-fourths shall be elected on the basis of adult suffrage. There will be Regional Councils for the autonomous regions. The District or Regional Councils will have power to create local councils or Boards. The District and Regional Councils have been given large legislative powers. In respect of their respective jurisdictions these bodies will have power to make laws in regard to allotment or occupation or use of land, the management of non-reserved forests, the administration of villages and towns including village or town Police and Public health and sanitation, the use of canal water for agriculture, the regulation of shifting cultivation, the establishment of village or town councils and their powers, the appointment or succession of Chiefs, the inheritance of property, marriage and social customs. All such laws, however, must be submitted to the Governor and, until assented to by him, will have no effect. In regard to other matters, the Governor will have power to modify Central or State laws in their application to the autonomous regions.

The District and Regional Councils will also enjoy powers of taxation. Both the Distirct and Regional Councils will have power, within their respective jurisdictions, to collect land revenue, taxes on land and buildings and tolls on persons resident within such areas. The District Councils will, in addition, have power to collect any of the following taxes within the districts—taxes on professions, trades and callings and employments; taxes on animals, vehicles and boats; taxes on the entry of goods into a market and tolls on passengers and goods carried in ferries; and taxes for the maintenance of schools, dispensaries or roads.

So far as the administration of justice in the autonomous regions is concerned, the Governor may confer on District or Regional Councils or other bodies set up by these Councils

such powers as he thinks fit under the Code of Civil Procedure, 1908, or the Code of Criminal Procedure, 1898, to try suits, cases or offences specified by him. To try other suits, cases or offences, the District and Regional Councils will have the authority to set up village councils or courts and other bodies with appellate jurisdiction.

(B) Some frontier tribal areas of Assam have been grouped as Part B. These are:—(1) North-East Frontier Tract including Balipara Frontier Tract, Tirap Frontier Tract, Abor Hills District, Misimi Hills District. (2) The Naga Tribal Area.

These are mostly areas in which there is as yet no settled administration. Parts of these areas are yet almost unexplored and unpenetrated by the administrative authorities in India. In the Naga Tribal Area, even head hunting still goes on. The areas, it has been felt, should be kept under Central administration for some time to come. Accordingly, the Constitution provides that these areas are to be administered by the President through the Governor of Assam as his agent. The Governor of Assam in discharging his functions in respect of these areas as the agent of the President will act in his discretion, that is, independently of the advice given by the Ministry of the State. The Governor has been empowered, whenever he thinks fit, to apply to these areas, with the approval of the President, any of the provisions that are applicable to the autonomous districts.

CHAPTER XXVIII

TRANSITIONAL PROVISIONS AND THE PRESENT GOVERNMENTS AT THE CENTRE AND THE STATES

ARTICLES 369 to 392 deal with the temporary and transitional provisions. Their effect is to continue, pending general elections under the Constitution, all the Governments existing at the Centre and in the States immediately before the commencement of the Constitution. Between August 15, 1947 *i.e.*, the day on which India became free and January 26, 1950, the day of inauguration of the new Constitution, India was being governed under the Adapted Act of 1935.

Present Government at the Centre—There is a President who has been elected, under Art. 380, by the Constituent Assembly. The Central Legislature is the provisional Parliament which is the same body as the Constituent Assembly of which the dual members, that is, persons who were members of both the Constituent Assembly and local Legislatures have been replaced by newly elected members (Art. 379). The same Ministry which was functioning immediately before the commencement of the Constitution is in office (Art. 381). The Federal Court has become the Supreme Court. The Present Central Government, it must be understood, are functioning according to the provisions of the new Constitution.

Present Governments in the States—In the States specified in Part A of the First Schedule, there are Governors as the executive heads. They are the same persons as were functioning as Governors in these States immediately before the commencement of the Constitution. The same Ministries are also continuing. The Legislatures too are the same bodies as were functioning as such immediately before the commencement of the Constitution. In Bihar, Bombay,

Table of Seats—State Legislative Councils

States	*Total of Seats*	*General Seats*	*Muhammadan Seats*	*Indian Christian Seats*	*Seats filled by Legislative Assembly*	*Seats to be filled by Governor*
1	2	3	4	5	6	7
Bihar ..	Not less than 28 Not more than 29	9	4	..	12	Not less than 8 Not more than 10
Bombay ..	Not less than 28 Not more than 29	20	5	..	..	Not less than 3 Not more than 4
Madras ..	Not less than 53 Not more than 55	85	7	3	..	Not less than 8 Not more than 10
United Provinces	Not less than 57 Not more than 59	34	17	..	..	Not less than 6 Not more than 8

Table of Seats—State Legislative Assemblies

States	Total Seats	General Seats											Seats for women				
		Total of General Seats	General Seats reserved for Scheduled Castes	Seats for backward tribes	Sikh Seats	Muhammadan Seats	Anglo-Indian Seats	Indian Christian Seats	Seats for representatives of Commerce, Industry, Mining, and Planting	Landholders' Seats	University Seats	Seats for labour	General	Sikh	Muhammadan	Anglo-Indian	Indian Christian
1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18
Assam	71	37	5	9	...	16	...	1	4	...	...	3	1	...	...	...	..
Bihar	150	86	15	7	...	39	1	1	4	4	1	3	3	...	1	...	..
Bombay	172	114	15	1	...	29	2	3	7	2	1	7	5	...	1	...	..
Madhya Pradesh	112	84	20	1	...	14	1	...	2	1	1	2	3	...	...	...	..
Madras	212	146	30	1	...	28	2	8	6	6	1	6	6	...	1	...	1
Orissa	60	44	6	5	...	4	...	1	1	2	...	1	...	...	...	...	..
Punjab	82	31	6	...	20	23	...	...	1	2	1	2	...	1	...	...	..
The United Provinces ..	226	140	20	...	...	64	1	2	3	6	1	3	4	...	2	...	..
West Bengal	90	44	14	...	...	21	3	1	7	2	1	3	1	...	1	1	..

Madras and the U.P. the Legislatures are bicameral, in other States unicameral. All these functionaries and bodies, it must be understood, are at present subject to the provisions of the new Constitution.

In each of the States specified in Part B of the First Schedule (except Vindhya Pradesh) there is a Rajpramukh occupying the same position and exercising the same powers as the Governor in the States of Part A of the First Schedule.

In Hyderabad, the Nizam, and in Mysore and Kashmir, the Maharajas, are the Rajpramukhs. In some of these States there are Legislatures. In all of them there are Ministries. Vindhya Pradesh was made a Centrally administered State a few weeks before the inauguration of the Constitution. It need hardly be said that the Governments of these States are at present functioning in terms of the new Constitution.

The States in Part C of the First Schedule are being Centrally-administered. The former High Courts as well as the subordinate courts are also continuing as such under the new Constitution. Thus apart from the High Courts, there are at present subordinate courts on both the civil and the criminal side in the States. On the civil side there is in every district a court with a District Judge and other subordinate or additional judges, having both original and appellate jurisdictions. They hear appeals from Munsiff's courts. There is a Munsiff's court in each subdivision and in some chowkies. On the criminal side, there is generally in each district a sessions court. A sessions court can pass any sentence but a sentence of death passed by it is subject to the confirmation of the High Court. The sessions courts are presided over by sessions judges and additional sessions judges. In important criminal cases the judges are helped by jurors or assessors. Below the sessions courts are the courts of the various classes of magistrates.

CHAPTER XXIX

INDIA AND THE COMMONWEALTH

INDIA is a member of the Commonwealth of Nations, which is more commonly known as the British Commonwealth. In spite of the fact that under the new Constitution India becomes a sovereign democratic Republic, at the Commonwealth Prime-Ministers' Conference held in London in April, 1949, the decision about India's continuing membership of the Commonwealth was taken unanimously. On April 29, 1949, a declaration was made by the Commonwealth Prime Ministers about their decision on this matter. The declaration contained the following:—

"The Government of India has informed the other governments of the Commonwealth of the intention of the Indian people that under the new Constitution, which is about to be adopted, India shall become a sovereign, democratic Republic. The Government of India has, however, declared and affirmed India's desire to continue her full membership of the Commonwealth of Nations and her acceptance of the King as the symbol of the free association of its independent member nations as such as the head of the Commonwealth. The Governments of the other countries of the Commonwealth, the basis of whose membership of the Commonwealth is not hereby changed, accept and recognise India's continuing membership in accordance with the terms of this declaration.

"Accordingly, the United Kingdom, Canada, Australia, New Zealand, South Africa, India, Pakistan and Ceylon hereby declare that they remain united as free and equal members of the Commonwealth of Nations, freely co-operating in the pursuit of peace, liberty and progress."

This London agreement about India's membership of

the Commonwealth was ratified by the Indian Constituent Assembly on May 17, 1949.

The word "British" seems to have been dropped by common agreement from the term "British Commonwealth". It is believed that the Prime Minister, Pandit Nehru, persuaded the other members of the Commonwealth to drop this epithet from the term. It need hardly be pointed out that patriotic Indians do not relish the suggestion about British superiority which the epithet implies.

It is important to note that India as a member of the Commonwealth does not pay allegiance to the king. The king is regarded as a mere symbol of Commonwealth association. And recognition of the king as a symbol of the association cannot be avoided so long as India desires to remain in Commonwealth. For, it should be clear, the king is the only link with the Commonwealth which is common to all the members and the king's headship, however symbolical, cannot be dispensed with without breaking the link with the Commonwealth. Other nations cannot regard India as part of the Commonwealth unless she has this link, which means in practice that India cannot claim any economic advantage in the international field as a member of the Commonwealth without recognising this link. The international system, called the Commonwealth of Nations, is held together by the link of the king.

Acceptance of the king as a symbol, however, has the following implications. India cannot pass without the assent of other members of the Commonwealth any law which may have the effect of altering the laws relating to the Succession to the Throne or the Royal Style and Titles. India also cannot set up a separate dynasty. Of course in strict law, there is nothing to prevent India from passing such a law. But according to a convention already

established among the members of the Commonwealth India cannot pass a law of this nature. It stands to reason that India cannot disregard this convention without at the same time going out of the Commonwealth. Also, according to this convention, neither the U. K. Parliament nor the legislature of any other member of the Commonwealth can pass such a law without India's assent.

In strict law, it must be admitted, the status of India inside the Commonwealth will be unequal to that of the United Kingdom. For the British Parliament will, in theory, have the authority to make laws for India and it may be argued that even the Indian freedom is based on laws made by Parliament, which can be abrogated by it. But these legal and constitutional niceties need not be made much of. In practice, they mean nothing. India will be a fully sovereign country in every sense of the term and will have the power to go out of the Commonwealth whenever she may choose to do so.

Membership of the Commonwealth has another implication. Indian citizens resident in the United Kingdom will have the same legal status and treatment as they enjoyed as British subjects formerly. In fact a Bill, called the India (consequential Provision) Bill has been passed by the British Parliament enabling Indian citizens to continue to enjoy these rights. Similarly, British nationals resident in India will be entitled to a similar treatment, for which provisions are likely to be made by the Indian Parliament. In other countries of the Commonwealth, too, the citizens of India will be entitled, on the basis of reciprocity, to some special privileges, which, however, are more hypothetical than real.

Membership of the Commonwealth may result in palpable benefit to India in the sphere of economic and

political matters. For example, reciprocal trade preferences and military aid may be given by the Commonwealth members to one another. But no definite conclusions about these matters can be reached at the present stage.

THE END